(22,961)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 138.

NATIONAL SAFE DEPOSIT COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. STEAD, ATTORNEY GENERAL OF THE STATE OF ILLINOIS; ANDREW RUSSELL, STATE TREASURER OF THE STATE OF ILLINOIS, AND WALTER K. LINCOLN, INHERITANCE TAX ATTORNEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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1 At a Supreme Court Begun and Held at Springfield on Tuesday, the Sixth day of December, in the Year of our Lord One Thousand Nine Hundred and Ten, Within and for the State of Illinois.

Present:

The Honorable Orrin N. Carter, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:
J. McCAN DAVIS, *Clerk.*

Be it remembered, to-wit, on the Second day of December, A. D. 1910, the same being one of the days in vacation just before the term of Court aforesaid a record of the proceedings in the Circuit Court of Cook County was filed by National Safe Deposit Company, appellant, in the office of the Clerk of the Supreme Court in words and figures following, to-wit:

2 *Transcript of Proceedings.*

UNITED STATES OF AMERICA,
State of Illinois, Cook County, ss:

Pleas Before the Honorable R. S. Tuthill, One of the Judges of the Circuit Court of Cook County, Illinois, at a Term Thereof Begun and Held at Chicago, in the Court House in said County and State, on the Third Monday (Being the 17th Day) of October, in the Year of Our Lord One Thousand Nine Hundred and Ten, and of the Independence of the United States the One Hundred and Thirty-fifth.

Present: Honorable R. S. Tuthill, one of the Judges of the Circuit Court of Cook County, State of Illinois; John E. W. Wayman, State's Attorney; Christopher Strassheim, Sheriff.

Attest:
JOSEPH E. BIDWILL, JR., *Clerk.*

Be it remembered that heretofore, to-wit, on the 15th day of March, A. D. 1910, a certain Bill of Complaint was filed in the office of the Clerk of said Court, in words and figures following, to-wit:

3 STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, March Term, A. D. 1910.

To the Honorable Judges of said Court in Chancery Sitting:

1. Your orator, National Safe Deposit Company, a corporation under the laws of the State of Illinois, for and on behalf of itself and its stockholders and all other corporations, firms and individuals similarly situated who are engaged in the business of renting safe deposit boxes for hire, respectfully represents and shows unto Your Honors that it was duly incorporated *on* or about the year 1881 for the express purpose of providing a suitable building or buildings with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise and to carry on the business of safety deposit and storage. That your Orator forthwith entered into the business of providing and renting safes and safe deposit boxes in its place of business at 164 Dearborn street, in the City of Chicago aforesaid, and has so continued up to the present time, and has succeeded in building up for itself a large and profitable business, consisting mainly of renting for hire safe deposit boxes or safes specially constructed for that purpose in its vaults, for the safe-keeping of money, securities of all kinds and valuables, the main feature of which business being that the contents of said boxes shall at all times during business hours be accessible only to the renters of said safe deposit boxes, or their duly authorized representatives, and that said boxes and their contents shall be at no time and under no circumstances subject to disturbance, access or control on the part of your Orator or any other person other than the renter or his duly authorized agent. That your Orator enters into a contract with each safe deposit box renter, upon the payment of the stipulated price for
4 such service, in words and figures as follows:

National Safe Deposit Company.

Rent payable in Advance.
Hours 9 to 5.
Close at 1 Saturday.
Capital $2,500,000.
First National Bank Building, Chicago. Telephones, Central 942, Number —.

Received of —— ——, — Dollars, for rent of Safe No. — in the vaults of this Company, for the term of one year from the — day of —— 191—. The liability of the National Safe Deposit Company is limited to the exercise of ordinary diligence to prevent the opening of said safe by any person other than the renter or his duly authorized representative and is assumed upon the express agreement by the renter that an unauthorized opening or other breach of duty shall not be presumed from the mere loss or disappearance of any of the contents of said safe.

Accepted, subject to the rules and regulations prescribed by the Company, which are printed on the back of this receipt.

DANIEL PECKHAM,
Secretary & Manager.

By —— ——.

Rules and Regulations by Which Each Renter Will Be Governed.

Whenever a party rents a safe and deposits therein at pleasure, contents not being known to the Company, its liability is limited;

I. No one except the renter or his deputy, to be designated in writing on the books of the company, or in case of death, his legal representative, to have access to the safe.

II. Renters will not examine their boxes or papers in the vaults, but will use desks provided for that purpose.

III. No renter will be permitted to enter the vaults except in the presence of the vault-keeper.

IV. In case of loss of keys or combination, the locks will be changed at the expense of the renter.

V. This Company reserves the right to terminate a rental at any time, on a written notice to the renter or deputy, and the renter will thereupon withdraw his papers and surrender the keys.

VI. In case the lease of a safe is not renewed and the rent for the term duly paid in advance, the Company is authorized after giving ten days' notice of its intention so to do, by mailing such notice to the renter at the address given in the books of the Company, to open said safe at the expense of the renter.

VII. The Manager of said Vaults shall fix the hours for opening and closing the same, and said Vaults may be wholly closed upon any National, State or City holiday, or upon any other days, when on account of mobs, unusual crowds, closing of the Chicago Clearing House Association, or for any other reason, said Manager shall deem such closing prudent or proper.

2. Your Orator further represents and shows that it now has in its vaults 13291 safes or safe deposit boxes, of which 9637 are under contract of rental to lessees upon the terms hereinabove set forth, and that approximately 3986 of said safe deposit boxes are contracted to be and are rented and held jointly, by more than one individual, any of whom has the right and privilege of keeping property in said safe deposit boxes, and having access thereto exclusively with his joint renters. That in addition to said joint box holders, there are approximately 316 of said safe deposit boxes rented and held by business co-partnerships. That, in fact, a very considerable portion of the box renting business of your Orator is with joint renters and co-partnerships, many of whom entered into their rental contracts prior to the first day of July, 1909, for the period of one year, which said leases are still in full force and effect, and that the

demand for joint rentals of safe deposit boxes is constantly
6 increasing, and that to all of said joint renters, as well as individual customers, your orators owe the duty of safe-keeping and undisturbed possession.

3. Your Orator further shows that in the ordinary course of said business of renting safe deposit boxes and safes, your orator retains no means of access to the boxes or safes so rented, but the same are locked and the keys and combinations thereof are held by the respective customers to whom the same are rented, nor does your orator possess any knowledge or information or means of knowledge or information, as to the nature or ownership of the securities, deposits or other assets which are deposited in said boxes and safes so rented; nor does your orator have at any time the contents of said boxes and safes in its possession or under its control, unless such possession or control is implied as a matter of law from the fact that said boxes and safes are located on your Orator's premises.

4. Your Orator further represents and shows unto Your Honors that on the first day of July, 1909, an act passed by the General Assembly of the State of Illinois went into effect, entitled, "An Act to tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in certain cases and to provide for the collection of the same, and repealing certain acts therein named," and which is commonly known as "The Inheritance Tax Law," superseding certain laws for the same purpose theretofore enacted. That the purpose of said law is to secure additional revenue from the State of Illinois by taxing the right to succession to the property of deceased persons dying, or having property, in the State of Illinois. That section 9 of said law as it now stands reads as follows:

"If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county
7 on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivors or survivor when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other Institution, person or persons deliver or transfer any securities deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more

persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General con-
8 sent thereto in writing. And it shall be lawful for the State Treasurer together with the Attorney General, personally or by representatives to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction."

5. Your Orator further represents and shows unto Your Honors that the State Treasurer and Attorney General of the State of Illinois claim under said pretended law the right to compel your orator, and similar institutions, to deny access to the personal representatives of deceased box-renters, and to the survivor or survivors of joint box renters, and to surviving partners of co-partnership box renters, to the contents of said safe deposit boxes, and further, said officials insist and claim that your orator, upon the death of a box renter, has a right of access to, and control over, the contents of any such safe deposit box, whether held by individual lessees, joint renters or co-partnerships, with the power to deny access thereto and to retain a portion of the contents thereof sufficient to pay
9 any tax that may thereafter be assessed upon the property in the box or even upon the general estate of the deceased of which the contents of such box may be a part only; and further, that the said State Treasurer and Attorney General claim the right to examine the contents of any such safe deposit box at the time of the delivery of the contents thereof to the person legally entitled thereto and at other times; all in direct conflict, not only with the terms and obligations imposed upon your Orator by its contracts aforesaid with said box renters, but also and particularly with the constitutional rights of said box renters and their legal representatives and especially of the constitutional rights of such surviving joint or partnership box renters not to have their property

taken without due process of law, nor to have their papers and effects unreasonably searched and seized. And said officials not only assert that your orator has the right to interfere with and deny access to the boxes and the property of their box tenants as aforesaid, and to allow them, said officials, so to interfere with and examine and search and exercise control over the same, but they also insist that your orator shall, in fact, interfere with and deny access to said boxes and allow them, said officials, to make such searches and examinations as aforesaid, and they continually threaten your orator, in case their demands and requirements aforesaid are not complied with, with the penalties denounced in said Act for non-compliance with its provisions.

6. Your Orator further shows unto your Honors that said Section 9 of the said Inheritance Tax Law, in so far as the same assumes to give your orator, or the said State Treasurer and Attorney General access to and control over the property and effects of deceased persons contained in the safe deposit boxes of your orator, and the power to examine and control and hold the property and effects of persons who are survivors of joint box renters or of co-partnerships, and in so far as the same interferes with the rights of your Orator and other safe deposit companies, persons or firms, to rent safe deposit boxes and safes to joint tenants or co-partners, or to make and perform such other lawful contracts as they may see fit in the conduct of their business, and in so far as the same seeks to make your Orator and safe deposit companies, or other persons or firms or corporations, public officers for the collection of taxes, or to impose upon them the duties and responsibilities of such public officers, and in so far as the same seeks to impose a penalty for the non-performance of such supposed duties or to render your orator and such safe deposit companies or other firms, persons, or corporations liable to the payment of a tax upon property belonging to other persons, and in so far as said law and its illegal methods of enforcement interfere with and seriously threaten the property rights of your Orator in the conduct of its safe deposit business as aforesaid, and impairs the obligations of all its contracts for the rental of boxes and safes entered into prior to July 1, 1909, the date the said law went into effect, is in violation of Article 1, Section 10 of the Constitution of the United States, providing that no state shall pass any law impairing the obligation of contracts; and of article IV of the Amendments to the said Constitution, providing that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and of section 1 of article XIV of the Amendments to said Constitution, providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and of article 11, section 2, of the Constitution of the State of Illinois, providing that no person shall be deprived of life, liberty or property without due process of law, and of article 11, section 6 of said Constitution, providing that the right of the people to be

secure in their papers and effects against unreasonable searches and seisures shall not be violated, and of article 11, section 14 of said Constitution, providing that no law impairing the obligation of contracts shall be passed; and of article 11, section 13 of said constitution, providing that private property shall not be taken or damaged for public use without just compensation; and your orator represents and shows that said section 9 of said act, in the particulars hereinabove set forth, is, therefore, unconstitutional, void and of no effect.

7. And your Orator further shows unto Your Honors that even if said section 9 were constitutional and in all respects a legal and binding enactment, which your orator denies, yet, nevertheless, it would not, when rightly construed, authorize the State Treasurer and the Attorney General or your orator, or any of them, to deny access to or meddle with the boxes or the contents thereof of co-partnership renters or of the surviving partner or partners of co-partnership renters, nor would it authorize said officials to require your Orator to interfere in any way with your Orator's co-partnership renters, or authorize your orator so to interfere on its own motion. On the contrary your Orator represents and says that the word "joint" wherever used in said section 9 is intended to refer to joint renters or owners or depositors who are not partners and to them only.

8. Your Orator further shows unto your Honors that the State Treasurer and the Attorney General also claim and insist that by and under the true intent and meaning of said section 9 of the Inheritance Tax Law aforesaid, your orator is forbidden to pay dividends to the legal representatives of deceased stockholders in your Orator's company when the stock still stands on your
12 Orator's books in the name of the deceased, no matter whether such dividends were earned or declared before or after the decease of the stockholders; whereas, as your Orator is advised and believes, said Section 9, rightly construed, allows your orator to pay dividends which are earned and declared after the death of a stockholder to the legal representatives of the deceased even where the stock itself has not been transferred to such legal representatives but stands still in the name of the deceased stockholder, without reporting such payment to the State officials aforesaid, or holding back or deducting therefrom any sum whatever on account of the Inheritance Tax Law aforesaid.

9. Your Orator further represents and shows unto Your Honors as the ground for equitable jurisdiction and relief herein, that it fears, both on account of the doubtful constitutionality of said section 9 of the Inheritance Tax law and of the diverse constructions thereof aforesaid, and especially in view of the fact that your Orator's business is large and deaths are of frequent occurrence among its customers, that it will be harrassed by a multiplicity of actions at law and yet be deprived of an adequate remedy at law, in as much as certain joint tenants and partnership renters and stockholders have threatened and others are frequently threatening your orator with suit if your orator complies with section 9 of the law aforesaid,

especially as construed by the State Treasurer and the Attorney General as aforesaid; and your orator further represents and shows that many such customers are also threatening to withdraw their patronage and business from your Orator unless such compliance with said section 9 be refused or discontinued. And your orator shows that while none of said threatened suits taken by itself might be destructive or inflict irreparable injury and the legal remedy might be found adequate in any single case, yet your Orator is advised and so charges the fact to be that a separate remedy
13 at law on each occasion of dispute with your Orator's customers as aforesaid would not be adequate to relieve your Orator in the premises, but on the contrary would vex and oppress your orator by their number and involve your orator in excessive and unnecessary loss and damage in its business.

10. Your Orator further represents and shows unto your Honors that if your Orator refuses to comply with the provisions of said section 9 as construed by the State Officials as aforesaid, and allows and permits surviving joint renters and surviving partners to have access to their respective boxes and safes and to their property therein contained, your orator becomes liable in each such instance under said section 9, if said section is constitutional and valid as so construed, to a fine of one thousand dollars and the payment of the inheritance tax, both to be enforced by suits by the State Treasurer aforesaid, and so your Orator fears that if it fails to comply with the provisions of said section 9, as construed by said state officers as aforesaid, it may further be harrassed and annoyed by a multiplicity of suits by the said State Treasurer upon the same subject matter. And your orator further shows unto Your Honors that by the terms of said pretended law as provided in section 9, your orator is placed in the position of a fiduciary stake-holder or agent, not itself liable for the payment of an inheritance tax but vested by said pretended law with the power and duty to aid in its collection and payment by subjecting private property to seizure and search, likely to be and threatened to be resisted by the owners of the property concerned in many different suits, while at the same time your orator is likely to be and is threatened to be penalized and sued in other suits by the officers entrusted with the collection of the tax aforesaid,
14 if the exercise of the power is refused. And therefore, your orator says that equity should intervene in this case to prevent the threatened multiplicity of suits.

11. Your Orator further represents and shows that the enforcement of the pretended rights and remedies contained in said section 9 of said law, indicate and threaten irreparable injury to your orator in that the threatened withdrawal of joint and partnership box rentals from the business of your Orator would occasion irreparable injury to your orator not susceptible of adequate or complete compensation in a court of law.

12. For as much, therefore, as your orator is without remedy in the premises except in a Court of Equity, your Orator prays that the said William H. Stead, the Attorney General of the State of Illinois, Andrew Russel, the State Treasurer of the State of Illinois

and Walter K. Lincoln, the Inheritance Tax Attorney, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that said section 9 of the Inheritance tax Law aforesaid be declared unconstitutional and void, or if held to be valid that the same may be construed by this Honorable Court and declared not to require your Orator or said State officials to interfere directly or indirectly with the property of the survivors of joint or co-partnership renters of boxes from your Orator in its safe deposit business, or to require your orator or said State officials to interfere with dividends accruing or declared after the death of any of your Orator's stockholders, or to withhold such dividends from the legal representatives of such deceased stockholders, and that the said William H. Stead, Attorney General, Andrew Russel,
State Treasurer and Walter K. Lincoln, Inheritance Tax
15 Attorney, and each of them may be restrained by the injunction of this court from further enforcing against your Orator the provisions of said section 9 of the Inheritance Tax aforesaid, or if said Section 9 be declared constitutional, then from enforcing against your orator and your Orator's customers the erroneous constructions thereof aforesaid, and that your Orator may have such other and further relief in the premises as equ-ty may require and to the court shall seem meet.

May it please the Court to grant the writ of summons in Chancery directed to the Sheriff of said County of Cook, commanding him that he summon the defendant Walter K. Lincoln Inheritance Tax Attorney, and to the Sheriff of Sangamon County, commanding him that he summon the defendants William H. Stead, the Attorney General of the State, and Andrew Russel, Treasurer of the State, to appear before this court on the first day of the March term thereof to be held at the court house at Chicago, in the County of Cook aforesaid, then and there to answer this bill.

And may it please your Honors to grant unto your orator the People's Writ of injunction to be directed to the said William H. Stead, the Attorney General of this State, Andrew Russell, the Treasurer of this State and Walter K. Lincoln the inheritance tax attorney, restraining them and each of them their agents and attorneys, from further enforcement against your orator of the provisions of section 9 of an Act to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases and to provide for the collection of the same and repealing certain acts therein named which took effect July 1, 1909, by interfering by or through your Orator with the property contained in any safe or safe-deposit box rented by your orator, whether the same be rented by one sole lessee or by two or more joint lessees or co-partners, or by requiring your orator to withhold dividends from the legal representatives of any of its stockholders deceased where such dividends were
earned and declared after the death of such stockholders,
16 until the further order of this court.

And your orator will ever pray, etc.

NATIONAL SAFE DEPOSIT COMPANY,
By DANIEL PECKHAM,
Secretary & Manager.

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.

STATE OF ILLINOIS,
Cook County, ss:

Daniel Peckham being duly sworn, on oath deposes and says that he is Secretary and Manager of the said National Safe Deposit Company, duly authorized to make this affidavit on its behalf, and that he has read and knows the contents of the foregoing Bill of Complaint, signed by him as Secretary and Manager of the Complainant, and that the same is true as therein stated.

DANIEL PECKHAM.

Subscribed and sworn to before me this 15th day of March, A. D. 1910.

[SEAL.] OLIVER B. WYMAN,
Notary Public.

Thereupon on the same day to-wit, on the 15th day of March A. D. 1910 a certain People's Writ of Summons issued out of the Office of the Clerk of said Court and under the Seal thereof directed to the Sheriff of Cook county to execute which writ together with the return of the Sheriff thereon endorsed are in words and figures following to-wit:

17 STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that you summon Walter K. Lincoln, Inheritance Tax attorney with William H. Stead, Attorney General and Andrew Russell, Treasurer of the State of Illinois if he shall be found in your County, personally to be and appear before the Circuit Court of Cook county on the first day of the term thereof to be holden at the Court House in the City of Chicago, in said Cook county, on the third Monday of March A. D. 1910 to answer unto National Safe Deposit Company a corporation in its certain bill of complaint filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Joseph E. Bidwill, Jr., Clerk of our said Court and the Seal thereof, at Chicago, in said County, this 15th day of March A. D. 1910.

[SEAL.] JOSEPH E. BIDWILL, Jr., *Clerk.*

Pd. 1.75.
M. .10.

Served this writ on the within named defendant Walter K. Lincoln, inheritance tax attorney by delivering a copy thereof to him this 16th day of March 1910.

CHRISTOPHER STRASHEIM, *Sheriff*,
By GEORGE D. LANGELOH, *Deputy*.

18 Thereupon on the same day to-wit on the 15th day of March A. D. 1910 a certain People's Writ of Summons issued out of the office of the Clerk of said Court and under the seal thereof directed to the Sheriff of Sangamon county to execute, which writ together with the return of the Sheriff thereon endorsed are in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of Sangamon County, Greeting:

We command that you summon William H. Stead, Attorney General and Andrew Russell, Treasurer of the State of Illinois (impleaded with Walter K. Lincoln Inheritance Tax attorney) if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the term thereof, to be holden at the Court House in the City of Chicago, in said Cook County, on the third Monday of March A. D. 1910 to answer unto National Safe Deposit Company a corporation in its certain bill of complaint filed in said Court on the Chancery side thereof.

And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same.

Witness, Joseph E. Bidwill, Jr., Clerk of our said Court and the Seal thereof, at Chicago in said County this 15th day of March A. D. 1910.

[SEAL.] JOSEPH E. BIDWILL, Jr., *Clerk*.

19 STATE OF ILLINOIS,
Sangamon County, ss:

I have served the within writ by reading the same and also giving William H. Stead, Attorney General and Andrew Russell, Treasurer of the State of Illinois each a true copy of the within writ this 16th day of March A. D. 1910.

CHAS. WERNER, *Sheriff*.

Fee $2.00.
Paid by Peckham, Brown, Packard & Walsh.

CHAS. WARNER, *Sheriff*.

And afterwards to-wit on the 18th day of April A. D. 1910 two certain Appearances was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court, to the April Term, A. D. 1910.

In Chancery. No. —.

NATIONAL SAFE DEPOSIT COMPANY, Complainant,
vs.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russell, State Treasurer of the State of Illinois; Walter K. Lincoln, Inheritance Tax Attorney.

And now comes Walter K. Lincoln, Inheritance Tax Attorney, defendant in error in the above entitled cause, and enters his appearance herein for the sole and only purpose of moving to quash the summons and the return thereon heretofore issued against and served upon said defendant.

Dated at Springfield, Illinois, this 15th day of April A. D. 1910.

WALTER K. LINCOLN,
Inheritance Tax Attorney.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court to the April Term, A. D. 1910.

In Chancery. No. —.

NATIONAL SAFE DEPOSIT COMPANY, Complainant,
v.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russell, State Treasurer of the State of Illinois; Walter K. Lincoln, Inheritance Tax Attorney.

And now comes William H. Stead, Attorney General of the State of Illinois, and Andrew Russel-, State Treasurer of the State of Illinois, defendants in the above entitled cause, by William H. Stead, Attorney General of the State of Illinois, and enter their appearance herein for the sole and only purpose of moving to quash the summons and the return thereon heretofore issued against and served upon said defendants.

Dated at Springfield, Illinois, this 15th day of April A. D. 1910.

WILLIAM H. STEAD,
Attorney General of the State of Illinois.

And thereupon on the same day, to-wit, on the 18th day of April A. D. 1910, two certain Motions *was* filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court to the April Term, A. D. 1910.

In Chancery. No. —.

NATIONAL SAFE DEPOSIT COMPANY, Complainant,
vs.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russell, State Treasurer of the State of Illinois; Walter K. Lincoln, Inheritance Tax Attorney.

21 And now comes Walter K. Lincoln, Inheritance Tax Attorney, named as defendants in the above entitled cause, by Walter K. Lincoln, Inheritance Tax Attorney, and moves the Court to quash the summons and return thereon heretofore issued against and served upon said defendant, as aforesaid, and as grounds for said motion said defendant shows to the court:

1. That the sole and only defendants to said bill of complaint are William H. Stead, Attorney General of the State of Illinois, and Andrew Russel-, State Treasurer of the State of Illinois.

2. That the summons issued herein against and served upon Walter K. Lincoln, Inheritance Tax Attorney was erroneously issued and served for the reason that Walter K. Lincoln, Inheritance Tax Attorney, is not in and by said bill of complaint a defendant.

WALTER K. LINCOLN,
Inheritance Tax Attorney.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court to the April Term, A. D. 1910.

In Chancery. No. —.

NATIONAL SAFE DEPOSIT COMPANY, Complainant,
v.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russel-, State Treasurer of the State of Illinois; Walter K. Lincoln, Inheritance Tax Attorney.

And now come William H. Stead, Attorney General of the State of Illinois and Andrew Russel-, State Treasurer of the State of Illinois, defendants in the above entitled cause, by William H. Stead, Attorney General of the State of Illinois, and move the Court to quash the summons and return thereon heretofore issued against and served upon said defendants, and as grounds for said motion said defendants show to the court:

22 1. That the only defendants to the bill of complaint filed herein are William H. Stead, Attorney General of the State

of Illinois and Andrew Russel-, State Treasurer of the State of Illinois.

2. That the said William H. Stead, Attorney General of the State of Illinois and Andrew Russel-, State Treasurer of the State of Illinois are made defendant to said bill of complaint in their official capacities, as Attorney General of the State of Illinois and as State Treasurer of the State of Illinois respectively.

3. That William H. Stead, as such Attorney General of the State of Illinois, and Andrew Russell, as such State Treasurer of the State of Illinois reside at the seat of government in the county of Sangamon and State of Illinois.

4. That said suit in no manner affects real estate in said county of Cook.

WILLIAM H. STEAD,
Attorney General of the State of Illinois.
ANDREW RUSSELL,
State Treasurer of the State of Illinois,
By WILLIAM H. STEAD,
Attorney General of the State of Illinois.

And thereupon on the same day, to-wit, on the 18th day of April A. D. 1910 the following proceedings were had and entered of record in said court, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court to the April Term, A. D. 1910.

In Chancery. No. —.

NATIONAL SAFE DEPOSIT COMPANY, Complainant,
vs.
WILLIAM H. STEAD, Attorney General of the State of Illinois;
23 Andrew Russell, State Treasurer of the State of Illinois;
Walter K. Lincoln, Inheritance Tax Attorney.

On motion of William H. Stead, Attorney General of the State of Illinois, for and on behalf of William H. Stead, Attorney General of the State of Illinois, and Andrew Russel- State Treasurer of the State of Illinois, named as defendants in the above entitled cause.

It is hereby ordered that the Clerk of the Circuit Court of Cook County, Illinois, receive and file the special appearances of said defendants without appearance fee or fees and that said Clerk shall collect his legal fees at the termination of said cause.

C. M. WALKER,
Judge of the Circuit Court of Cook County.

And afterwards to-wit on the 27th day of April A. D. 1910 a certain Notice was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, April Term, A. D. 1910.

In Chancery. Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
v.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russell, State Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney.

To Walter K. Lincoln, Inheritance Tax Attorney, and William H. Stead, Solicitors for Certain Parties:

Please take notice that on Wednesday, the 27th day of April A. D. 1910, at the opening of court on that day or as soon thereafter
24 as counsel can be heard, we shall before his Honor Judge Walker in the room usually occupied by him as a court room in said County, ask for leave to file an amended bill of complaint forthwith and for an ordering directing that new summons be issued on said amended bill of complaint, at which time and place you may be present if you see fit.

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.

Received a copy of the above notice this 25th day of April A. D. 1910.

____ ____
____ ____
Solicitors for Certain Parties.

No. 818,441.

Receipt for Registered Mail.

This receipt represents a letter or parcel registered at the post office indicated by postmark. Inquiries concerning registered mail should state the number of the article, date of its registration and the names and addresses of the sender and addressee. The sender of the article represented by this receipt should write the name and address of the addressee on the reverse side.

Postmark: Chicago, Ill., April 25, 1910.
Registered.
— Class postage prepaid.

POSTMASTER,
Per K.

STATE OF ILLINOIS,
Cook County, ss:

Harry Jovien being first duly sworn on oath, deposes and says that he served the foregoing notice leaving a copy thereof at the office

of Walter K. Lincoln, Inheritance Tax Attorney, 726 First National Bank Building, Chicago, Illinois, this 25th day of April, A. D. 1910; that he also served a copy of the foregoing notice on William H. Stead by mailing a copy of the same by registered mail addressed to William H. Stead, Attorney General of the State of Illinois, Springfield, Illinois, this 25th day of April A. D. 1910.

25 And further affiant saith not.

HARRY JOVIEN.

Subscribed and sworn to before me this 25th day of April A. D. 1910.

ELLA M. OLSEN,
Notary Public.

[SEAL.]

And thereupon on the same day to-wit, on the 27th day of April A. D. 1910 the following proceedings were had and entered of record in said court, to-wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, April Term, A. D. 1910.
In Chancery. Gen. No. 296,821. Term No. 8153.

NATIONAL SAFE DEPOSIT COMPANY
vs.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russel-, State's Treasurer of the State of Illinois, and Walker K. Lincoln, Inheritance Tax Attorney.

Order.

On motion of solicitors for complainant, and on notice, it is ordered that leave be and it is hereby given complainant to file an amended bill of complaint instanter, and that summons issue to the defendants therein named.

And thereupon on the same day to-wit on the 27th day of April A. D. 1910 a certain Amended Bill was filed in the office of the Clerk of said Court in words and figures following to-wit:

26 STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, April Term, A. D. 1910.
In Chancery. Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
vs.
WILLIAM H. STEAD, Attorney General of the State of Illinois; Andrew Russel-, State Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney.

And now comes the complainant by its solicitors, and leave of court being first asked and obtained, files its Amended Bill of Complaint, as follows:

1. Your Orator, National Safe Deposit Company, a corporation under the laws of the State of Illinois, for and on behalf of itself and its stockholders and all other corporations, firms and individuals similarly situated who are engaged in the business of renting safe deposit boxes for hire, respectfully represents and shows unto Your Honors that it was duly incorporated on or about the year 1881 for the express purpose of providing a suitable building or buildings with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise and to carry on the business of safety deposit and storage. That your orator forthwith entered into the business of providing and renting safes and safe deposit boxes in its place of business at 164 Dearborn street, in the City of Chicago aforesaid, and has so continued up to the present time, and has succeeded in building up for itself a large and profitable business, consisting mainly of renting for hire safe deposit boxes or safes especially constructed for that purpose in its vaults, for the safe-keeping of money, securities of all kinds and valuables, the main feature of which business being that the contents of said boxes shall at all times during business hours be accessible only to the renters
27 of said safe deposit boxes, or the duly authorized representatives, and that said boxes and their contents shall be at no time and under no circumstances subject to disturbance, access or control on the part of your Orator or any other person other than the renter or his duly authorized agent. That your orator enters into a contract with each safe deposit box renter, upon the payment of the stipulated price for such service, in words and figures as follows:

National Safe Deposit Company.

Rent Payable in Advance.
Hours 9 to 5.
Close at 1 Saturday.
Capital $2,500,000.

First National Bank Building, Chicago.
Telephones, Central 942, Number —.

Received of —— ——, — Dollars for rent of safe No. — in the vaults of this company for the term of one year from the — day of ——, 191—. The liability of the National Safe Deposit Company is limited to the exercise of ordinary diligence to prevent the opening of said Safe by any person other than the renter or his duly authorized representative and is assumed upon the express agreement by the renter that an unauthorized opening or other breach of duty shall not be presumed from the mere loss or disappearance of any of the contents of said safe.

Accepted, subject to the Rules and Regulations prescribed by the Company, which are printed on the back of this receipt.

DANIEL PECKHAM,
Secretary & Manager,
By ——.

Rules and Regulations by Which Each Renter will Be Governed.

Whenever a party rents a safe and deposits therein at pleasure, contents not being known to the Company, its liability is limited.

I. No one except the renter or his deputy, to be designated in writing on the books of the Company, or in case of death his legal representatives, to have access to the safe.

II. Renters will not examine their boxes or papers in the vaults, but will use desks provided for that purpose.

28 III. No renter will be permitted to enter the vaults except in the presence of the vault-keeper.

IV. In case of loss of keys or combination, the locks will be changed at the expense of the renter.

V. This Company reserves the right to terminate a rental at any time, on a written notice to the renter or deputy, and the renter thereupon will withdraw his papers and surrender the keys.

VI. In case the lease of a safe is not renewed, and the rent for the term duly paid in advance, the Company is authorized after giving ten days' notice of its intention so to do, by mailing such notice to the renter at the address given in the books of the Company, to open said safe at the expense of the renter.

VII. The Manager of said Vaults shall fix the hours for opening and closing the same, and said Vaults may be wholly closed upon any National, State or City holiday, or upon any other days when, on account of mobs, unusual crowds, closing of the Chicago Clearing House Association, or for any other reason, said Manager shall deem such closing prudent or proper.

2. Your orator further represents and shows that it now has in its vaults 13,291 safes or safe deposit boxes, of which 9,637 are under contract of rental to lessees upon the terms hereinabove set forth, and that approximately 3,986 of said safe deposit boxes are contracted to be and are rented and held jointly, by more than one individual, any of whom has the right and privilege of keeping property in said safe deposit boxes, and having access thereto exclusively with his joint renters. That in addition to said joint box holders, there are approximately 316 of said safe deposit boxes rented and held by business co-partnerships. That, in fact, a very considerable portion of the box renting business of your Orator is with joint renters and co-partnerships, many of whom entered

29 into their rental contracts prior to the first day of July, 1909, for the period of one year, which said leases are still in full force and effect, and that the demand for joint rentals of safe deposit boxes is constantly increasing, and that to all of said joint renters as well as individual customers, your Orator owes the duty of safe-keeping and undisturbed possession.

3. Your Orator further shows that in the ordinary course of said business of renting safe deposit boxes and safes your Orator retains no means of access to the boxes or safes so rented, but the same are locked and the keys and combinations thereof are held by the respective customers to whom the same are rented, nor does your ora-

tor possess any knowledge or information, or means of knowledge or information, as to the nature or ownership of the securities, deposits or other assets which are deposited in said boxes and safes so rented; nor does your orator have at any time the contents of said boxes and safes in its possession or under its control, unless such possession or control is implied as a matter of law from the fact that said boxes and safes are located on your Orator's premises.

4. Your Orator further represents and shows unto Your Honors that on the first day of July, 1909, an act passed by the General Assembly of the State of Illinois went into effect, entitled "An Act to tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in certain cases and to provide for the collection of the same, and repealing certain acts therein named," and which is commonly known as "The Inheritance Tax Law," superseding certain laws for the same purpose theretofore enacted. That the purpose of said law is to secure additional revenue from the State of Illinois by taxing the right to succession to the property of deceased persons dying, or having property, in the State of Illinois. That section 9 of said law as it now stands reads as follows:

"If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the

safe deposit company, trust company, corporation bank or
31 other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General personally or by representatives, to examine said securities, deposits, or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction."

5. Your orator further represents and shows unto Your Honors that William H. Stead, the State Treasurer of the State of Illinois, and Andrew Russel, the Attorney General of the State of Illinois, and Walter K. Lincoln, Inheritance Tax attorney, an officer entrusted under section 16 of said Inheritance tax law with the ascertainment and collection of inheritance taxes and further being duly and specifically authorized by the said State Treasurer and Attorney General with the enforcement of said section 9 of said law, claim under said pretended law the right to compel your orator, and
32 similar institutions, to deny access to the personal representatives of deceased box-renters, and to the survivor or survivors of joint box renters, and to surviving partners of co-partnership box renters, to the contents of said safe deposit boxes; and further, said officials insist and claim that your Orator, upon the death of a box renter, has a right of access to, and control over, the contents of any such safe deposit box, whether held by individual lessees, joint renters or copartnerships, with the power to deny access thereto and to retain a portion of the contents thereof sufficient to pay any tax that may thereafter be assessed upon the property in the box or even upon the general estate of the deceased of which the contents of such box may be a part only; and further, that the said State Treasurer and Attorney General and Inheritance Tax attorney claim the right to examine the contents of any such safe deposit box at the time of the delivery of the contents thereof to the person legally entitled thereto and at other times; all in direct conflict, not only with the terms and obligations imposed upon your Orator by its contracts aforesaid with said box renters, but also and particularly with the constitutional rights of said box renters and their legal representatives and specially of the constitutional rights of such surviving joint or partnership box renters not to have their property taken

without due process of law, nor to have their papers and effects unreasonably searched and seized. And said officials not only assert that your Orator has the right to interfere with and deny access to the boxes and the property of their box tenants as aforesaid, and to allow them said officials, so to interfere with and examine and search and exercise control over the same, but they also insist that your Orator shall, in fact, interfere with and deny access to said boxes and allow them, said officials, to make such searches and examinations as aforesaid, and they continually threaten your Orator,
33 in case their demands and requirements aforesaid are not complied with, with the penalties denounced in said Act for non-compliance with its provisions.

6. Your Orator further shows unto your Honors that said Section 9 of the said Inheritance Tax Law, in so far as the same assumes to give your orator, or the said State Treasurer and Attorney General and Inheritance Tax Attorney access to and control over the property and effects of deceased persons contained in the safe deposit boxes of your or-tor, and the power to examine and control and hold the property and effects of persons who are survivors of joint box renters or of co-partnerships, and in so far as the same interferes with the rights of your orator and other safe deposit companies, persons or firms, to rent safe deposit boxes and safes to joint tenants or co-partners, or to make and perform such other lawful contracts as they may see fit in the conduct of their business, and in so far as the same seeks to make your orator and safe deposit companies, or other persons or firms or corporations, public officers for the collection of taxes, or to impose upon them the duties and responsibilities of such public officers, and in so far as the same seeks to impose a penalty for the non-performance of such supposed duties or to render your Orator and such safe deposit companies or other firms, persons, or corporations liable to the payment of a tax upon property belonging to other persons, and in so far as said law and its illegal methods of enforcement interfere with and seriously threaten the property rights of your Orator in the conduct of its safe deposit business as aforesaid, and impairs the obligations of all its contracts for the rental of boxes and safes entered into prior to July 1, 1909,
34 the date the said law went into effect, is in violation of article 1, section 10 of the Constitution of the United States, providing that no state shall pass any law impairing the obligation of contracts, and of article IV of the Amendments to the said Constitution, providing that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and of section 1 of Article XIV of the Amendments to said Constitution, providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and of article 11, section 2 of the Constitution of the State of Illinois, providing that no person shall be deprived of life, liberty or property without due process of law; and of article 11, section 6 of said Constitution, providing that the right of the people to be secure

in their papers and effects against unreasonable searches and seizures shall not be violated; and of article 11, section 14 of said Constitution, providing that no law impairing the obligation of contracts shall be passed, and of article 11, section 13 of said Constitution, providing that private property shall not be taken or damages for public use without just compensation, and your orator represents and shows that said section 9 of said act, in the particulars hereinabove set forth, is, therefore, unconstitutional, void and of no effect.

7. And your Orator further shows unto Your Honors that even if said section 9 were constitutional and in all respects a legal and binding enactment, which your orator denies, yet, nevertheless, it would not, when rightly construed, authorize the State Treasurer and the Attorney General or the Inheritance Tax Attorney, or your orator, or any of them, to deny access to or meddle with the boxes or the contents thereof of copartnership renters or of the surviving partner or partners of co-partnership renters, nor would it authorize said officials to require your orator to interfere in any way with your Orator's co-partnership renters, or authorize your orator so to interfere on its own motion. On the contrary, your orator represents and says that the word "joint" wherever used in said section 9 is intended to refer to joint renters or owners or depositors who are not partners and to them only.

8. Your orator further shows unto Your Honors that the State Treasurer and the Attorney General and Inheritance Tax attorney, also claim and insist that by and under the true intent and meaning of said section 9 of the Inheritance tax law aforesaid, your orator is forbidden to pay dividends to the legal representatives of deceased stockholders in your Orator's company when the stock still stands on your Orator's books in the name of the deceased, no matter whether such dividends were earned or declared before or after the decease of the stockholder whereas, as your orator is advised and believes, said section 9, rightly construed, allows your orator to pay dividends which are earned and declared after the death of a stockholder to the legal representatives of the deceased even where the stock itself has not been transferred to such legal representative but stands still in the name of the deceased stockholder, without reporting such payment to the State official aforesaid, or holding back or deducting therefrom any sum whatever on account of the Inheritance Tax Law aforesaid.

9. Your orator further represents and shows unto Your Honors as the ground for equitable jurisdiction and relief herein that it fears, both on account of the doubtful constitutionality of said section 9 of the Inheritance Tax Law and of the diverse constructions thereof aforesaid, and especially in view of the fact that your Orator's business is large and deaths are of frequent occurrence among its customers, that it will be harassed by a multiplicity of actions at law and yet be deprived of an adequate remedy at law, inasmuch as certain joint tenants and partnership renters and stockholders have threatened and others are frequently threatening your orator with suit if your orator complies with section 9 of the law aforesaid, especially as construed

by the State Treasurer and the Attorney General as aforesaid; and your orator further represents and shows that many such customers are also threatening to withdraw their patronage and business from your orator unless such compliance with said section 9 be refused or discontinued. And your orator shows that while none of said threatened suits taken by itself might be destructive or inflict irreparable injury, and the legal remedy might be found adequate in any single case, yet your Orator is advised and so charges the fact to be that a separate remedy at law on each occasion of dispute with your Orator's customers as aforesaid would not be adequate to relieve your Orator in the premises, but on the contrary would vex and oppress your orator by their number and involve your orator in excessive and unnecessary loss and damage in its business.

10. Your orator further represents and shows unto Your Honors that if your orator refuses to comply with the provisions of said section 9 as construed by the State Officials as aforesaid, and allows and permits surviving joint renters and surviving partners to have access to their respective boxes and safes and to their property therein contained, your orator — becomes liable in each such instance under said section 9, if said section is constitutional and valid as so construed, to a fine of one thousand dollars and the pay-
87 ment of the inheritance tax, both to be enforced by suits by the State Treasurer aforesaid, and so your Orator fears that if it fails to comply with the provisions of said section 9, as construed by said State officers as aforesaid, it may further be harassed and annoyed by a multiplicity of suits by the State Treasurer upon the same subject matter. And your orator further shows unto Your Honors that by the terms of said pretended law as provided in section 9, your orator is placed in the position of a fiduciary stake-holder or agent, not itself liable for the payment of an inheritance tax, but vested by said pretended law with the power and duty to aid in its collection and payment by subjecting private property to seizure and search, likely to be, and threatened to be resisted by the owners of the property concerned in many different suits; while at the same time your orator is likely to be and is threatened to be penalized and sued in other suits by the officers entrusted with the collection of the tax aforesaid, if the exercise of the power is refused. And, therefore, your orator says that equity should intervene in this case to prevent the threatened multiplicity of suits.

11. Your orator further represents and shows that the enforcement of the pretended rights and remedies contained in said section 9 of said law, indicate and threaten irreparable injury to your orator in that the threatened withdrawal of joint and partnership box rentals from the business of your orator would ocasion irreparable injury to your orator not susceptible of adequate or complete compensation in a court of law.

12. For so much, therefore, as your orator is without remedy in the premises except in a Court of Equity your orator prays that the said William H. Stead, the Attorney General of the State

of Illinois, Andrew Russel, the State Treasurer of the State
30 of Illinois and Walter K. Lincoln, the Inheritance Tax Attorney, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that said section 9 of the Inheritance Tax Law aforesaid be declared unconstitutional and void, or if held to be valid that the same may be construed by this Honorable Court and declared not to require your orator or said State officials to interfere directly or indirectly with the property of the survivors of joint or co-partnership renters of boxes from your Orator in its safe deposit business, or to require your Orator or said State officials to interfere with dividends accruing or declared after the death of any of your Orator's stockholders, or to withhold such dividends from the legal representatives of such deceased stockholders, and that the said William H. Stead, Attorney General, Andrew Russell State Treasurer and Walter K. Lincoln, Inheritance Tax Attorney, and each of them may be restrained by the injunction of this court from further enforcing against your Orator the provisions of said section 9 of the Inheritance Tax Act aforesaid, or if said section 9 be declared constitutional, then from enforcing against your orator and your orator's customers the erroneous constructions thereof aforesaid, and that your Orator may have such other and further relief in the premises as equity may require and to the court shall seem meet.

May it please the Court to grant the writ of summons in Chancery directed to the Sheriff of said County of Cook commanding him that he summon the defendant Walter K. Lincoln, Inheritance Tax Attorney, and to the Sheriff of Sangamon County commanding
him that he summon the defendants William H. Stead,
39 the Attorney General of the State, and Andrew Russel, the Treasurer of the State, to appear before this court on the first day of the May term thereof to be held at the court house at Chicago in the county of Cook aforesaid, then and there to answer this amended bill.

And may it please Your Honors to grant unto your Orator the People's Writ of Injunction to be directed to the said William H. Stead, the Attorney General of this State, Andrew Russell, the Treasurer of this state, and Walter K. Lincoln, the Inheritance Tax Attorney, restraining them and each of them their agents and attorneys, from further enforcement against your orator of the provisions of section 9 of an act to tax gifts legacies, inheritances, transfers, appointments and interests in certain cases and to provide for the collection of the same and repealing certain acts therein named which took effect July 1, 1909, by interfering by or through your orator with the property contained in any safe or safe-deposit box rented by your orator, whether the same be rented by one sole lessee or by two or more joint lessees or co-partners, or by requiring your orator to withhold dividends from the legal representatives of any of its stockholders deceased where such dividends were earned and declared after the death of such stockholders, until the further order of this court.

And your orator will ever pray, etc.

NATIONAL SAFE DEPOSIT COMPANY,
By DAVID PECKHAM,
Secretary & Treasurer.

PECKHAM, BROWN, PECKHAM & WALSH,
Solicitors for Complainant.

40 STATE OF ILLINOIS,
Cook County, ss:

Daniel Peckham being duly sworn, on oath deposes and says that he is secretary and Manager of the said National Safe Deposit Company, duly authorized to make this affidavit on its behalf, and that he has read and knows the contents of the foregoing bill of complaint signed by him as secretary and manager of the complainant, and that the same is true as therein stated.

DAVID PECKHAM.

Subscribed and sworn to before me this 26th day of April, A. D. 1910.

[SEAL.] ELLA M. OLSON,
Notary Public.

Thereupon on the same day to-wit on the 27th day of April A. D. 1910 a certain People's Writ of Summons issued out of the office of the Clerk of said Court and under the Seal thereof directed to the Sheriff of Cook County to execute, which writ together with the return of the Sheriff thereon endorsed are in words and figures following, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that you summon Walter K. Lincoln, Inheritance Tax Attorney, impleaded with William H. Stead, Attorney General of the State of Illinois and Andrew Russell, State Treasurer of the State of Illinois if he shall be found in your County
41 personally to be and appear before the Circuit Court of Cook County, on the first day of the term thereof, to be holden at the Court House in the City of Chicago in said Cook County, on the third Monday of May A. D. 1910 to answer unto National Safe Deposit Company a corporation in its certain amended bill of complaint filed in said court on the Chancery side thereof. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Joseph E. Bidwill, Jr., Clerk of our said Court, and the

Seal thereof, at Chicago in said County, this 27th day of April A. D. 1910.

[SEAL.] JOSEPH E. BIDWILL, JR., *Clerk.*

Pd. 1.75.
M. .10.

Served this writ on the within named defendant Walter K. Lincoln, Inheritance Tax Attorney by delivering a copy thereof to him this 27th day of April 1910.

CHRISTOPHER STRASSHEIM, *Sheriff.*
By GEORGE D. LANGELOH, *Deputy.*

And afterwards to-wit on the 29th day of October A. D. 1910 a certain Notice was filed in the office of the Clerk of said Court, in words and figures following to-wit:

Copy.

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, October Term, A. D. 1910.

In Chancery. Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT CO.
vs.
WILLIAM H. STEAD, Attorney General, et al.

To William H. Stead, Attorney General; Andrew Russel, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Defendants:

Please take notice that on Saturday, the 29th day of Octo-
42 ber, 1910, at the opening of court on that day, or as soon thereafter as counsel can be heard, we shall before His Honor Judge Tuthill, in the room usually occupied by him as a court room in said County, ask leave to file a second amended bill in the above entitled cause, and further ask for a rule on all defendants to plead, answer or demur to said second amended bill in three days, at which time and place you may appear if you see fit.

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.

Received a copy of the foregoing notice this 28th day of October A. D. 1910.

ANDREW RUSSELL,
State Treasurer.
W. H. STEAD,
Attorney General.
WALTER K. LINCOLN,
Inheritance Tax Atty.

STATE OF ILLINOIS,
Cook County, ss:

Gen. No. 296,821. In Chancery. Term No. 8138.

NATIONAL SAFE DEPOSIT CO.
v.
WILLIAM H. STEAD, Attorney General, et al.

To William H. Stead, Attorney General; Andrew Russel-, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Defendants:

Please take notice that on Saturday, the 29th day of October, 1910, at the opening of court on that day, or as soon thereafter as counsel can be heard, we shall before His Honor Judge Tuthill, in the room usually occupied by him as a court room in said County, ask leave to file a second amended bill in the above entitled cause, and further ask for a rule on all defendants to plead answer or demur to said second amended bill in three days, at which
43 time and place you may appear if you see fit.

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.

Received a copy of the foregoing notice this 26th day of October A. D. 1910.

W. H. STEAD,
Attorney General.

And thereupon on the same day to-wit on the 29th day of October A. D. 1910 the following proceedings were had and entered of record in said court, to-wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, October Term, A. D. 1910.

General No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
vs.
WILLIAM H. STEAD, Attorney General, et al.

Order.

On motion of solicitors for complainant, and on notice to all defendants,

It is ordered that leave be and it is hereby given complainant to file a second amended bill in the above entitled cause instanter; and it is further ordered that a rule be entered on all defendants to plead, answer or demur to said second amended bill in 15 days.

And thereupon on the same day to-wit on the 29th day of October A. D. 1910 a certain 2nd Amended Bill was filed in the office of the Clerk of said Court in words and figures following to-wit:

44 Copy.

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, October Term, A. D. 1910.

Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT CO.
vs.
WILLIAM H. STEAD, Attorney General, et al.

2d Amended Bill.

And now comes the complainant, by its solicitors, and leave of court being first asked and obtained, files its amended bill of complaint, as follows:

1. Your orator, National Safe Deposit Company, a corporation under the laws of the State of Illinois, for and on behalf of itself and its stockholders and all other corporations, firms and individuals similarly situated who are engaged in the business of renting safe deposit boxes for hire, respectfully represents and shows unto Your Honors that it was duly incorporated on or about the year 1881 for the express purpose of providing a suitable building or buildings with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise and to carry on the business of safety deposit and storage. That your orator forthwith entered into the business of providing and renting safes and safe deposit boxes in its place of business at 164 Dearborn street, in the City of Chicago aforesaid, and has so continued up to the present time, and has succeeded in building up for itself a large and profitable business, consisting mainly of renting for hire safe deposit boxes or safes specially constructed for that purpose in its vaults, for the safe-keeping of money, securities of all kinds and valuables. That your orator enters into a contract with each safe deposit box renter, upon the payment of the stipulated price for such service, in words and figures as follows:

45 National Safe Deposit Company.

Capital $2,500,000.
Rent Payable in Advance.
Hours 9 to 5.
Close at 1 Saturday.

First National Bank Building, Chicago. Telephones, Central 942.
Number —.

Received of —— ——, — Dollars, for rent of Safe No. — in the vaults of this Company, for the term of one year from the —

day of ——, 191–. The liability of the National Safe Deposit Company is limited to the exercise of ordinary diligence to prevent the opening of said Safe by any person other than the renter or his duly authorized representative and is assumed upon the express agreement by the renter that an unauthorized opening or other breach of duty shall not be presumed from the mere loss or disappearance of any of the contents of said safe.

Accepted, subject to the Rules and Regulations prescribed by the Company, which are printed on the back of this receipt.

DANIEL PECKHAM,
Secretary and Manager,

By —— ——.

Rules and Regulations by Which Each Renter Will Be Governed.

Whenever a party rents a safe and deposits therein at pleasure, contents not being known to the Company, its liability is limited:

I. No one except the renter or his deputy, to be designated in writing on the books of the Company, or in case of death, his legal representatives, to have access to the safe.

II. Renters will not examine their boxes or papers in the vaults, but will use desks provided for that purpose.

III. No renter will be permitted to enter the vaults except in the presence of the vault-keeper.

IV. In case of loss of keys or combination, the locks will be changed at the expense of the renter.

V. This Company reserves the right to terminate a rental at any time, on a written notice to the renter or deputy, and the renter will thereupon withdraw his papers and surrender the keys.

VI. In case the lease of a safe is not renewed, and the rent for the term duly paid in advance, the Company is authorized after giving ten days' notice of its intention so to do, by mailing such notice to the renter at the address given in the books of the Company, to open said safe at the expense of the renter.

VII. The Manager of said Vaults shall fix the hours for opening and closing the same, the said Vaults may be wholly closed upon any National, State or City holiday, or upon any other days when, on account of mobs, unusual crowds, closing of the Chicago Clearing House Association, or for any other reason, said Manager shall deem such closing prudent or proper.

2. Your orator further represents and shows that it now has in its vaults 13,291 safes or safe deposit boxes, of which 9,702 are under contract of rental to lessees upon the terms hereinabove set forth, and that approximately 4,104 of said safe deposit boxes are contracted to be and are rented and held jointly, by more than one individual any of whom has the right and privilege of
46 keeping property in said safe deposit boxes, and having access thereto exclusively with his joint renters. That in addition to said joint box holders, there are approximately 317 of said safe deposit boxes rented and held by business co-partnerships. That, in fact, a very considerable portion of the box renting busi-

ness of your orator is with joint renters and co-partnerships, and that the demand for joint rentals of safe deposit boxes is constantly increasing, and your orator alleges that it is advised as a matter of law that to all of said renters, as well as individual customers, your orator owes the duty of safe-keeping and undisturbed possession.

3. Your orator further shows that in the ordinary course of said business said safe deposit boxes and safes so rented can be opened only by two keys or two combinations, one of which keys or combinations is held by or known only to the renter to whom said box is rented, and the other of which keys or combinations is held by or known only to your said orator, or to its servants, agents, or employees and that it requires the joint act of such customer and said complainant to secure access to the contents of a safe deposit box or boxes or safe or safes so rented or leased as aforesaid, and thus while the co-operation of your orator through its servants or agents is needed in the opening of the said boxes or safes and securing access to their contents, your orator retains no means of access to them by itself or by its servants or agents alone, nor does your orator possess any knowledge or information or means of knowledge or information as to the ownership of the securities,
47 deposits or other assets which are deposited in said boxes and safes so rented other than the fact that said securities, deposits or other assets are contained in a certain particular box or safe rented as aforesaid.

And your orator says that only in case of emergencies and contingencies not in the ordinary course of business, does your orator ever open or have anything to do with opening said boxes or safes so rented as aforesaid except by thus co-operating with said renters or customers when they respectively come to open and seek access to said boxes or safes.

Your orator represents that said emergencies and contingencies are provided for in the contract of renting evidenced by the receipt and the Rules and Regulations thereto attached. In case of the loss of keys by the renter reported to your orator, your orator in the presence of the renter, which is insisted on by your orator, drills out the lock on the safe or box and replaces it by a new lock and keys.

In case of abandonment of a box or safe by a renter, evidenced by failure to renew a lease that has expired or by delinquency in the payment of the rent reserved for said box without explanation or otherwise, after a reasonable notice to said renter to withdraw the contents of said box and to surrender the keys, your orator reserves and sometimes exercises the said right in accordance with said contract, to open said box by drilling out the lock, withdrawing the contents of said box and holding them at the order and disposition of the renter, and in accordance with Rule V as above set
48 forth, your orator reserves the right to terminate a lease at any time on a written notice to the renter or deputy and demand the withdrawal by the renter of the contents of the box and a surrender of the keys.

Your orator further represents that on the decease of a renter of a box or safe, if no administration is taken out and persons identified

to be next of kin to the said renter represent that there may be a will of the renter in said box, your orator allows said next of kin, in the presence of its agents, to open said box if the said next of kin has the keys and without removing anything therefrom, look for such a will which, if found, is deposited in the Probate Court or given to a Probate Court representative by your orator, and in some instances, where the said next of kin or family of the deceased renter have represented that the keys of the deceased could not be found, the lock has been drilled out and changed at their request and in their presence, and your orator, in view of the premises, represents that it is advised as a matter of law that it does not have the contents of said boxes or safes in its possession or control. If it has such possession and control, it is only as the same is implied as a matter of law from the fact that such boxes and safes are located on your orator's premises and are rented by it and that the course of business is as above set forth and indicated.

4. Your orator further represents and shows unto Your Honors that on the first day of July, 1909, an act passed by the General Assembly of the State of Illinois went into effect, entitled "An Acts to tax Gifts, Legacies, Inheritances, Transfers, Appoint-
49 ments and Interests in certain cases and to provide for the collection of the same, and repealing certain acts therein named," and which is commonly known as "The Inheritance Tax Law," superseding certain laws for the same purpose theretofore enacted. That the purpose of said law is to secure additional revenue for the State of Illinois by taxing the right to succession to the property of deceased persons dying, or having property, in the State of Illinois. That Section 9 of said law as it now stands reads as follows:

"If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names

of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of
50 the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction."

5. Your orator further represents and shows unto your Honors that William H. Stead, the Attorney General of the State of Illinois, and Andrew Russel, the State Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney, an officer entrusted under Section Sixteen (16) of said Inheritance Tax Law with the ascertainment and collection of inheritance taxes and further being duly and specifically authorized by the said State Treasurer and Attorney General with the enforcement of said Section Nine (9) of said law, claim under said law, the right to compel your orator and similar institutions to deny to the personal representatives of deceased box renters and to the survivor or survivors of joint box renters and to surviving partners of co-partnership box renters, control over and liberty to remove the contents of said safe deposit boxes or any part thereof, unless notice of the time and place of the intended removal is served upon the State Treasurer and Attorney General at least ten days prior to such removal and unless the State Treasurer and Attorney General consent in writing to such removal—or a sufficient portion or amount of said contents be retained by your orator to pay any tax and interest which may thereafter be assessed on account of the taking possession of the contents of said box by said personal representatives of the decedent or by said survivor or survivors
51 among joint box holders or by the surviving partners of the decedent if the box was held in the name of a co-partnership.

And thus said officials insist and claim that your orator in effect has, upon the death of a box renter, a right of access to and control over, the contents of any such safe deposit box whether held by individual lessees, joint renters, or co-partnerships with the power to deny the personal representatives of the decedent or to his survivors among joint box holders or in a partnership—the right of control and removal thereof, and with the power to retain a portion of the contents thereof sufficient to pay any tax that may hereafter be assessed upon the property in the box. Your orator shows further that the said State Treasurer and Attorney General and Inheritance Tax Attorney claim the right to examine the contents of any such safe deposit box at the time of the removal or taking possession of the said contents by the person legally entitled thereto. All of which claims as your orator is advised as a matter of law are in direct conflict not only with the terms and obligations imposed upon your orator by its contracts aforesaid with said box renters, but also and particularly with the constitutional rights of said box renters and their legal representatives and especially with the constitutional rights of such surviving joint or partnership box renters not to have their property taken without due process of law nor to have their papers and effects unreasonably searched and seized.

And said officials not only assert that your orator has the right to interfere with the boxes and the property of their box tenants as aforesaid, and to deny control of said boxes and the
52 property therein to personal representatives and survivors of decedents as aforesaid, and to allow them, said officials, so to interfere with and examine the same, but they also insist that your orator shall in fact interfere with and refuse the control of and the taking possession of and removal of the contents of said boxes as aforesaid, and allow them, said officials, to make such searches and examinations as aforesaid and they threaten your orator in case their demands and requirements aforesaid are not complied with, with the penalties denounced in said Act for non-compliance with its provisions.

6. Your orator further shows unto Your Honors that said Section 9 of the said Inheritance Tax Law, in so far as the same assumes to give your orator, or the said State Treasurer and Attorney General and Inheritance Tax Attorney access to and control over the property and effects of deceased persons contained in the safe deposit boxes of your orator, and the power to examine and control and hold the property and effects of persons who are survivors of joint box renters or of co-partnerships, and in so far as the same interferes with the rights of your orator and other safe deposit companies, persons or firms, to rent safe deposit boxes and safes to joint tenants or co-partners, or to make and perform such other lawful contracts as they may see fit in the conduct of their business, and in so far as the same seeks to make your orator and safe deposit companies, or other persons or firms or corporations, public officers for the collection of taxes, or to impose upon them the duties and responsibilities of such

public officers, and in so far as the same seeks to impose a
53 penalty for the non-performance of such supposed duties or to render your orator and such safe deposit companies or other firms, persons, or corporations liable to the payment of a tax upon property belonging to other persons, and in so far as said law and its illegal method of enforcement interfere with and seriously threaten the property rights of your orator in the conduct of its safe deposit business as aforesaid, is in violation of Article I, Section 10, of the Constitution of the United States, providing that no state shall pass any law impairing the obligation of contract; and of Article IV of the Amendments to the said Constitution, providing that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and of Section 1 of Article XIV of the Amendments to said Constitution, providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and of Article II, Section 2, of the Constitution of the State of Illinois; providing that no person shall be deprived of life, liberty or property without due process of law; and of Article II, Section 6, of said Constitution, providing that the right of the people to be secure in their papers and effects against unreasonable searches and seizures shall not be violated; and of Article II, Section 14, of said Constitution, providing that no law impairing the obligation of contract shall be passed; and of Article II, Section 13, of said Constitution, providing that private property shall not be taken or damaged for public use without just compensation; and your orator represents and shows that
54 said Section 9 of said Act, in the particulars hereinabove set forth, is, therefore, unconstitutional, void and of no effect.

7. And your orator further shows unto your Honors that even if said Section Nine (9) were constitutional and in all respects a legal and binding enactment, which your orator denies, yet, nevertheless, it would not, when rightly construed, authorize the State Treasurer and the Attorney General, or the Inheritance Tax Attorney, or your orator, or any of them, to deny the right of the immediate control of the removal of the contents of the boxes of co-partnership renters by the surviving partner or partners of co-partnership renters, nor would it authorize said officials to require your orator to interfere in any way with your orators' co-partnership renters, or authorize your orator so to inte-fere on its own motion. On the contrary, your orator represents and says that the word "joint," wherever used in said Section 9, is intended to refer to joint renters or owners or depositors who are not partners and to them only.

8. Your orator further represents and shows unto Your Honors as the ground for equitable jurisdiction and relief herein, that it fears, both on account of the doubtful constitutionality of said Section 9 of the Inheritance Tax Law and of the diverse constructions thereof aforesaid, and especially in view of the fact that your orator's business is large and deaths are of frequent occurrence among its customers, that it will be harassed by a multiplicity of actions at law and yet be deprived of an adequate remedy at law, in as much as

certain joint tenants and partnership renters, and stockhold-
55 ers have threatened and others are frequently threatening your orator with suit if your orator complies with Section 9 of the law aforesaid, especially as construed by the State Treasurer and the Attorney General as aforesaid; and your orator further represents and shows that many such customers are also threatening to withdraw their patronage and business from our orator unless such compliance with said Section 9 be refused or discontinued. And your orator shows that while none of said threatened suits taken by itself might be destructive or inflict irreparable injury, and the legal remedy might be found adequate in any single case, yet your orator is advised and so charges the fact to be that a separate remedy at law on each occasion of dispute with your orator's customers as aforesaid would not be adequate to relieve your orator in the premises, but on the contrary, would vex and oppress your orator by their number and involve your orator in excessive and unnecessary loss and damage in its business.

And your orator claims that under the theory of the defendants to this bill regarding the constitutionality and effect of the said Section 9, your orator has such possession and control of the contents of all its safe deposit boxes, under such conditions as to allowing or denying to the renters thereof to the personal representatives of a deceased renter, to the survivor or survivors of joint box renters or partnership renters, and to all other persons, including the defendants to this bill, access to, inspecting of, control of, and the taking possession or removal of, said contents, as to make your said orator a trustee of said contents under said conditions and trusts
56 and that if your orator is such trustee then your orator has a right to the instructions of a court of equity of competent jurisdiction in relation to said trusts and conditions, and has the duty incumbent on it to seek such instructions—which by this bill it now asks, as to all the matters hereinbefore set forth; and that a separate suit in equity for such instructions as to any particular box or the contents thereof would be impracticable, and would vex and oppress your orator by the number of suits and involve your orator in excessive and unnecessary loss, damage, and expense in its business.

9. Your orator further represents and shows unto Your Honors that if your orator refuses to comply with the provisions of said Section 9, as construed by the state officials as aforesaid, and allows and permits surviving joint renters and surviving partners to have access to and the control of their respective boxes and safes and to their property therein contained, your orator becomes liable in each such instance under Section 9 if said section is constitutional and valid as so construed, to a fine of one thousand dollars and the payment of the inheritance tax, both to be enforced by suits by the State Treasurer aforesaid, and so your orator fears that if it fails to comply with the provisions of said Section 9 as construed by said state officers as aforesaid, it may further be harassed and annoyed by a multiplicity of suits by the said State Treasurer upon the same subject matter.

And your orator further shows unto Your Honors that by the

terms of said law as provided in Section 9, if it applies to
57 the contents of its safe deposit boxes, and is constitutional and valid, which your orator denies, your orator is placed in the position of a fiduciary stake holder, agent, or trustee—not itself liable for the payment of an inheritance tax, but vested by said law with the power and duty to aid in its collection and payment by subjecting private property to seizure and search, likely to be and threatened to be resisted by the owners of the property concerned in many different suits; while at the same time your orator is likely to be and is threatened to be penalized and sued in other suits by the officers entrusted with the collection of the tax aforesaid, if the exercise of the power is refused—and your orator represents that it is entitled to have instructions from this court as to its proper conduct in its fiduciary capacity and as trustee as aforesaid, and invokes the aid of this Honorable Court for instruction as to its duties as to all the premises—and particularly as to whether it should deny the personal representatives of a deceased box holder and to the survivor or survivors of joint box tenants or partnership box tenants, the right of control, possession and removal of the contents of any safe deposit box except with the written consent of the defendants, the State Treasurer and the Attorney General, or the retention of a sufficient portion or amount of the contents of said box to pay any tax and interest that may thereafter be assessed on account of the transfer of any portion of the contents of said box.

10. Your orator further represents and shows that the enforcement of the pretended rights and remedies contained in said Section 9 of said law, indicate and threaten irreparable injury to your
58 orator in that the threatened withdrawal of joint and partnership box rentals form the business of your orator would occasion irreparable injury to your orator not susceptible of adequate or complete compensation in a court of law.

And, also, your orator says that equity should intervene in this case to prevent the threatened multiplicity of suits.

11. For as much, therefore, as your orator is without remedy in the premises except in a court of equity, your orator prays that the said William H. Stead, the Attorney General of the State of Illinois, Andrew Russel, the State Treasurer of the State of Illinois, and Walter K. Lincoln, the Inheritance Tax Attorney, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that said Section 9 of the Inheritance Tax Law aforesaid be declared unconstitutional and void, or if held to be valid that the same may be construed by this Honorable Court by instructions from this Honorable Court to it as to its fiduciary and trust relations hereinbefore set forth and that if this court should agree with your orator's construction of the said law it should be declared not to require your orator or said State officials to interfere directly or indirectly with the property of the survivors of joint or co-partnership renters of boxes from your orator in its safe deposit business, and that the said William H. Stead, Attorney General, Andrew Russel, State Treasurer, and Walter K. Lincoln, Inherit-

ance Tax Attorney, and each of them may be restrained by the injunction of this court from further enforcing against your
59 orator the provisions of said Section 9 of the Inheritance Tax Act aforesaid, or if said Section 9 be declared constitutional, then from enforcing against your orator and your orator's customers the erroneous constructions thereof aforesaid, and that your orator may have such other and further relief in the premises as equity may require and to the court shall seem meet.

May it please the Court to grant the writ of summons in Chancery directed to the Sheriff of said County of Cook, commanding him that he summon the defendant Walter K. Lincoln, Inheritance Tax Attorney, and to the Sheriff of Sangamon County, commanding him that he summon the defendant William H. Stead, the Attorney General of the State, and Andrew Russel, the Treasurer of the State, to appear before this court on the first day of the October 1910 Term thereof to be held at the court house at Chicago, in the County of Cook aforesaid, then and there to answer this amended bill.

And may it please Your Honors to grant unto your orator the People's writ of injunction to be directed to the said William H. Stead, the Attorney General of this State, Andrew Russel, the Treasurer of this State, and Walter K. Lincoln, the Inheritance Tax Attorney, restraining them and each of them, their agents and attorneys, from further enforcement against your orator of the provisions of Section 9 of an Act to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases and to provide for the collection of the same and repealing certain acts therein named which took effect July 1, 1909, by interfering by or through your orator with the property contained in any safe or safe deposit box
60 rented by your orator, whether the same be rented by one sole lessee or by two or more joint lessees or co-partners, or by requiring your orator to withhold dividends from the legal representatives of any of its stockholders deceased where such dividends were earned and declared after the death of such stockholders, until the further order of this court.

And your orator will ever pray, etc.

NATIONAL SAFE DEPOSIT COMPANY,
By DANIEL PECKHAM, *Secretary and Manager.*

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.

61 STATE OF ILLINOIS,
Cook County, ss:

Daniel Peckham being first duly sworn, on oath deposes and says that he is Secretary and Manager of the National Safe Deposit Company, complainant, and as such executed the foregoing amended Bill of Complaint, that he knows the contents of said bill and that the same is true as therein stated. DANIEL PECKHAM.

Subscribed and sworn to before me this 26th day of October, A. D. 1910.

[SEAL.] ELLA M. OLSEN,
Notary Public.

62 And afterwards to-wit on the 2nd day of November A. D. 1910 a certain Demurrer was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court, October Term, A. D. 1910.

General No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
v.
WILLIAM H. STEAD, Attorney General, et al.

The Demurrer of William H. Stead, Attorney General of the State of Illinois; Andrew Russell, Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney of Cook County, to the Second Amended Bill of Complaint of the National Safe Deposit Company, Complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said second amended bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to said second amended bill of complaint, and for cause of demurrer, show that the complainant has not, in and by its said second amended bill, made or stated such a case as entitles it in a court of equity to any relief from or against these defendants, or any of them, touching the matters contained in the said second amended bill, or any of such matters, and that the complainant has
63 not, as appears by its said second amended bill of complaint, made out any title to the relief thereby prayed.

Wherefore, and for divers other good causes appearing in the said second amended bill of complaint, these defendants demur to the said second amended bill of complaint, and to all the matters and things therein contained, and pray the judgment of this honorable Court whether they shall be compelled to make any further or other answer to the said second amended bill of complaint, and they pray to be dismissed with their reasonable costs in this behalf sustained.

WM. H. STEAD,
Attorney General;
ANDREW RUSSEL,
Treasurer of the State of Illinois;
WALTER K. LINCOLN,
Inheritance Tax Attorney of Cook County
By WM. H. STEAD,
Attorney General;
WALTER K. LINCOLN,
Inheritance Tax Attorney of Cook County,
Solicitors for Defendants.

And thereupon on the same day to-wit on the 2nd day of November A. D. 1910, the following proceedings were had an entered of record in said court, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County, October Term, A. D. 1910.

Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
vs.
WILLIAM H. STEAD, Attorney General, et al.

Order.

On motion of defendants, it is hereby ordered that the demurrer of William H. Stead, Attorney General, of the State of Illi-
64 nois, Andrew Russell, Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney of Cook county, Illinois, to the second amended bill of complaint of said National Safe Deposit Company, complainant, *to* be filed without Clerk's costs. Enter.

R. S. TUTHILL,
Judge of the Circuit Court of Cook County.

Nov. 2, 1910.

And afterwards to-wit on the 4th day of November A. D. 1910, a certain Notice was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, October Term, A. D. 1910.

Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
vs.
WILLIAM H. STEAD, Attorney General, et al.

To William H. Stead, Attorney General, and Walter K. Lincoln, Inheritance Tax Attorney of Cook County, Solicitors for Defendants:

Please take notice that on Friday the Fourth day of November, A. D. 1910, at the opening of court on that day, or as soon thereafter as counsel can be heard, we shall before his Honor Judge Tuthill, in the room usually occupied by him as a court room in

said county, call up for disposition the demurrer heretofore filed by the defendants to the complainant's second amended Bill of Complaint, and ask the court to pass upon the same, at which time and place you may be present if you see fit.

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.

65 Received a copy of the foregoing notice this 2nd day of November, A. D. 1910.

W. H. STEAD,
Attorney General.
WALTER K. LINCOLN,
Inheritance Tax Att'y.

And thereupon on the same day to-wit on the 4th day of November A. D. 1910 the following proceedings were had and entered of record in said court, to-wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County, October Term, A. D. 1910.

Gen. No. 296,821. Term No. 8138.

NATIONAL SAFE DEPOSIT COMPANY
vs.
WILLIAM H. STEAD, Attorney General; ANDREW RUSSEL, State Treasurer, and WALTER K. LINCOLN, Inheritance Tax Attorney.

Order.

This cause coming on to be heard upon the second amended Bill of Complaint and the demurrer thereto heretofore filed herein, and the court being fully advised in the premises,

It is ordered that the said demurrer be and the same is hereby sustained and the complainant having elected to stand by its second amended Bill of Complaint,

It is further ordered that said second amended Bill of Complaint be and the same is hereby dismissed at complainant's costs.

Whereupon complainant prays an appeal to the Supreme Court of the State of Illinois, which is hereby allowed upon complainant filing an appeal bond in the sum of $250.00 with surety to
66 be approved by the clerk of this court within twenty days from this date.

And afterwards to-wit on the 9th day of November A. D. 1910, a certain Appeal Bond was filed in the office of the Clerk of said Court, in words and figures following to-wit:

Appeal Bond—Supreme Court.

Know all men by these presents That we National Safe Deposit Company, a corporation and Fidelity and Deposit Company of Maryland a corporation of the County of Cook and State of Illinois are held and firmly bound unto William H. Stead, Attorney General, Andrew Russel, State Treasurer, and Walter K. Lincoln Inheritance Tax Attorney also of the same county and state in the penal sum of Two hundred and fifty dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals, this 5th day of November A. D. 1910.

The condition of the above obligation is such, That whereas, the said William H. Stead, Attorney General, Andrew Russel- State Treasurer and Walter K. Lincoln, Inheritance Tax attorney did on the 4th day of November A. D. 1910 in the Circuit Court of Cook county in the State aforesaid and of the October term thereof A. D. 1910, recover a decree against the above bounden National Safe Deposit Company for the costs of suit; from which said decree of the said Circuit Court of Cook county, the said National Safe Deposit Company has prayed for and obtained an appeal to the Supreme Court of said State;

Now therefore, if the said National Safe Deposit Company shall duly prosecute its said appeal with effect, and moreover
67 pay the amount of the decree, costs, interests, and damages rendered, and to be rendered, against it in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

NATIONAL SAFE DEPOSIT CO.,
By JAS. B. FORGAN, *Pr.* [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By ARTHUR C. ARNOLD, [SEAL.]
By —— ——, *Attorney in Fact.* [SEAL.]

Attest,
[SEAL.] DANIEL PECKHAM, *Secretary.*

Approved:
[SEAL.] JOSEPH E. BIDWILL, JR., *Clerk.* [*Seal.*]

STATE OF ILLINOIS,
County of Cook, ss:

I, Joseph E. Bidwill, Jr. Clerk of the Circuit Court of Cook County, and the keeper of the records and file thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain cause lately pending in said Court, on the Chancery side thereof, between National Safe Deposit Company (a corp.) complainant and Walter

K. Lincoln, Inheritance Tax Attorney (impleaded with etc. defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Chicago, in said County, this 12th day of November 1910.

[SEAL.] JOSEPH E. BIDWILL, JR., *Clerk.*

68 STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County.

General Number 296,821.

NATIONAL SAFE DEPOSIT COMPANY, Complainant,
vs.
WILLIAM H. STEAD, Attorney General; ANDREW RUSSEL, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Defendants.

Assignments of Error.

Now comes National Safe Deposit Company, complainant herein, and makes the following assignments of error to the decree of the Circuit Court herein upon which it relies for ground of reversal on appeal;

1. The said Circuit Court erred in sustaining the demurrer of the defendants to the second amended bill of complaint herein.

2. The said Circuit Court erred in dismissing the said second amended bill of complaint at plaintiff's costs.

3. The said Circuit Court erred in not overruling the demurrer herein and entering a decree in accordance with the complainant's bill.

NATIONAL SAFE DEPOSIT COMPANY,
By PECKHAM, BROWN, PACKARD & WALSH,
Its Solicitors.

69 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield on Tuesday, the Sixth Day of June, in the Year of Our Lord One Thousand Nine Hundred and Eleven, Within and for the State of Illinois.

Present:
The Honorable Orrin N. Carter, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:
J. McCAN DAVIS, *Clerk.*

Be it remembered, that afterward to-wit, on the 20th day of June, 1911, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Error to —.

No. 7510.

NATIONAL SAFE DEPOSIT COMPANY, Appellant,
v.
WILLIAM H. STEAD, Attorney General, et al.

Appeal from Circuit Court of Cook County.

70 Supreme Court, State of Illinois, February Term, A. D. 1911.

No. 7510.

Ag. 24.

NATIONAL SAFE DEPOSIT COMPANY, Appellant,
vs.
WILLIAM H. STEAD, Attorney General, et al., Appellees.

Appeal from Circuit Court of Cook County.

This was a bill in chancery filed by the National Safe Deposit Company, the appellant, against William H. Stead, Attorney General, Andrew Russel, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, the appellees, in the circuit court of Cook county, to restrain said officers from enforcing against the appellant, and all other corporations, firms and individuals similarly situated and who are engaged in the business of renting safety deposit boxes and safes for hire, the provision of section 9 of an act entitled "An Act to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases and to provide for the collection of the same, and repealing certain acts therein named." (Approved June 14th 1909, in force July 1, 1909, (Hurd's Stat. p. 1897) on the ground that said section of said act is unconstitutional and void.

A general demurrer was interposed to the bill and sustained and the bill was dismissed for want of equity, and the record has been brought to this court by the complainant by appeal for further review.

Section 9 reads as follows:

"If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state, standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on
71 the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person

or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent, who was a resident or non-resident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion of amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or
72 transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above described, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction."

The sole object in filing this bill was to test the constitutionality of said section 9 of the Inheritance Tax Law of 1909. The allegations of the bill are in substance, as follows: that appellant was in 1881 incorporated under the laws of this state for the express purpose of providing a suitable building or buildings with vaults and safes, with a special regard to protection against loss by fire, robbery

or otherwise, and to carry on the business of safety deposit and storage, and has ever since been engaged in carrying out such purposes; that it has succeeded in building up a large and profitable business, consisting chiefly of renting for hire safe deposit boxes or safes especially constructed for that purpose in its vaults for the safe keeping of money, securities and valuables, one provision in
73 the contract between appellant and each box renter being that no one except the renter or his deputy, to be designated in writing on the books of the company, or, in case of death, his legal representatives, shall have access to the box or safe; that appellant now has in its vaults 13,291 safes or safe deposit boxes, of which 9702 are under contracts of rental; that of the latter number, 4104 are rented to and held jointly by more than one individual, each of whom has access to the box of which he is a joint renter and the right to keep property therein and 316 are rented to and held by business co-partnerships and that the demand for joint rentals is constantly increasing. The bill further alleges that in the ordinary course of business the safes and boxes can be opened only by the use of two keys, one of which is held by the lessee and the other by the appellant and that it requires the joint act of the customer and appellant to secure access to the contents of a box or safe; that appellant retains no means of access to the box or safe by itself alone nor does it possess any knowledge or information, or means of knowldge or information, as to the ownership of the contents of the box or safe; that appellant never by its own act opens a box or safe rented to a customer unless the lessee loses his key or abandons his box or safe; that in case of the loss of the key, appellant, in the presence of the lessee, drills out the lock on the safe or box and replaces it with a new lock and key, and in case of abandonment of a box or safe by a renter, evidenced by his failure to renew the lease or pay the rent, appellant by the contract of leasing reserves, and sometimes exercises, the right, after reasonable notice to the lessee to withdraw the contents of the box and surrender the key, to open the box by drilling out the lock, to withdraw the contents and hold them subject to the order and disposition of the renter. The bill further alleges that upon the death of the lessee of a box or *or* safe,
74 and before letters of administration have been issued, appellant permits the next of kin having the key to open the box, in the presence of the appellant's agents, for the purpose, only, of ascertaining whether decedent has left a will in the box which, if found, is deposited in the probate court by appellant, and in some instances where the next of kin have represented that they could not find the key to the box, the lock has been drilled out and changed at their request and in their presence, in order to look for such will, but in neither case does appellant permit the removal of anything other than the will from the box.

The bill further alleges that appellees claim that under the provisions of section 9 of the Inheritance Tax Law of 1909 they have the right to compel appellant and similar institutions to deny to the personal representatives of deceased box renters, and to the survivor

or survivors of joint box renters, and to surviving partners of co-partnership box renters, control over and liberty to remove the contents of the safe deposit boxes, or any part thereof, unless notice of the time and place of the intended removal is served upon the State Treasurer and Attorney General at least ten days prior to such removal, and unless the State Treasurer and Attorney General consent, in writing, to such removal, or a sufficient portion or amount of such contents be retained by appellant to pay any tax and interest which may thereafter be assessed, on account of the taking possession of the contents of such box by the personal representatives of the decedent, or by the survivor or survivors among joint box holders, or by the surviving partners of the decedent if the box was held in the name of a co-partnership; that appellees also claim the right to examine the contents of any such safe deposit box at the time of the removal or taking possession of the contents by the person
75 legally entitled thereto; all of which claims appellant insists are in conflict with the terms and obligations imposed upon it by its contracts with box renters and with the constitutional rights of box renters and their legal representatives, and especially with the constitutional rights of surviving joint or partnership box renters, as said section 9 is in violation of section 10 of article 1 of the constitution of the United States, and of article 4 and of section 1 of article 14 of the amendments to the constitution of the United States, and is also in violation of sections 2, 6, 13, and 14 of article 2 of the constitution of this State, and is therefore, in the particulars above set forth, unconstitutional and void. The bill also contains allegations intended to show the jurisdiction of a court of equity to take cognizance of the matter in order to prevent multiplicity of suits and to prevent irreparable injury to appellant's business.

It is contended by the appellant that its constitutional rights, both State and Federal, are infringed upon by said section of the statute in the following particulars; (1) That it impairs the obligations of its charter; (2) that it deprives it of liberty and property without due process of law; and (3) that it deprives it of the due protection of the law. It is also insisted that its lessees, in addition to being deprived of liberty, property and the equal protection of the law, have (1) their property subjected to unreasonable searches and seizures, and (2) that their property is devoted to a public use without just compensation, and it is further urged that it is (1) forced to become a trustee and to perform the duties of a trustee without its consent, and that it is (2) required to perform the duties of a tax-assessing and collecting officer without its consent.

HAND, *J.*:

76 The right of appellant to maintain this bill has not been challenged by the appellees, and it will therefore be assumed without argument for the purpose of this appeal, and the allegations of the bill are sufficient to show that a property right of the appellant was involved in the court below and that the bill could be maintained to avoid a multiplicity of suits. Craft v. I. D. & W. Ry.

Co. 166 Ill. 580; Cragg v. Levinson, 238 Ill. 69; Pelton v. National Bank, 101 U. S. 143; Cummings v. National Bank, 101 U. S. 153; Hills v. Exchange Bank, 105 U. S. 319; U. P. Railway v. Ryan, 113 U. S. 526.

The counsel for the appellant and the counsel for the State differ widely and fundamentally upon the relation which the appellant sustains toward its lessees, and the property which its lessees place in the safety deposit boxes and safes which they rent from the appellant, and as to the interest of the State in the property situated in a safety deposit box or safe, placed there by a lessee, upon the death of the lessee, when the property is subjected to the payment of an inheritance tax.

We think for the proper decision of this case, the exact relation which the appellant sustains to a person to whom it rents a safety deposit box or safe and the property placed in such box or safe by lessee and the interest which the State has in the property of a lessee remaining in such safety deposit box or safe upon his death, if such property is subject to an inheritance tax, must necessarily be determined as a preliminary question, as according to our view, the correct determination of those questions will simplify many of the questions discussed in the briefs and eliminate others, and place the case in such situation that a rational solution of the question here involved, whose determination is vital to a correct decision of this case, may readily be determined.

77

We think it clear that where a safety deposit company leases a safety deposit box or safe, and the lessee takes possession of the box or safe and places therein his securities or other valuables, that the relation of bailee and bailor is created between the parties to the transaction as to such securities or other valuables and that the fact that the safety deposit company does not know and that it is not expected it shall know, the character or description of the property which is deposited in such safety deposit box or safe does not change that relation, any more than the relation of a bailee who should receive for safe keeping a trunk from a bailor would be changed by reason of the fact that the trunk was locked and the key retained by the bailor although the obligation resting upon the bailee with reference to the care he should bestow upon the property in the trunk might depend upon his knowledge of the contents of the trunk. Obviously, the bailee would be in possession of the trunk and its contents, and no amount of argument would demonstrate that while the trunk was in possession of the bailee its contents were in the possession of the bailor, solely by reason of the fact that the bailor of the trunk retained the key and the bailee did not have access to the trunk. We are of the opinion that the relation of bailee and bailor exists between the appellant and its lessees and that the deposit of the securities and valuables by its lessees in rented safety deposit boxes or safes is a bailment, and that the law applicable to bailments generally, applies to such transactions and to such property. In Mayer v. Brensinger, 180 Ill. 110 the appellee rented from the appellant a safety deposit box in his safety deposit

vault, in which he deposited cash. During the illness of the
78 appellee the cash was removed from the box and suit was brought and a recovery was had. In that case as in this, the appellee retained the key to the box. The court, on page 113, said:

"The relation which appellant bore to the appellee was that of a bailee or depository for hire. As such bailee or depository for hire appellant was bound to exercise ordinary care and diligence in the preservation of the property entrusted to him by the appellee. Ordinary care in such cases is such care as every prudent man takes of his own goods and ordinary diligence in the preservation of such goods is such diligence as men of common prudence usually exercise about their own affairs. (Chicago and Alton Railroad Co. v. Scott, 42 Ill. 132.) Although one who hires a box in the vaults of a safety deposit company may keep the key himself, yet the company without any special contract to that effect will be held to at least ordinary care in keeping the deposit."

In the case of Lockwood v. Manhattan Storage & Warehouse Company, 50 N. Y. Supp. 974, it appeared that the defendant among other things, maintained at its warehouse safe deposit vaults containing separate safe deposit boxes or safes. The plaintiff had for a consideration paid, rented a safe deposit box of defendant. One key to the box was held by the plaintiff and one by the defendant. Access to the box could be gained only by the use of the said two keys. Plaintiff deposited in her box certain sums of money which when she returned some days later she found had disappeared. Suit was brought to recover the value of the property abstracted. That defendant was not in the possession of plaintiff's property was urged upon the court. In disposing of the case the court said:

"It is urged upon the part of the defendant that it was not the bailee because it was not in possession of the plaintiff's prop-
79 erty. If it was not, it is difficult to know who was. Certainly the plaintiff was not, because she could not obtain access to the property without the consent and active participation of the defendant. She could not go into her safe unless the defendant used its key first and then allowed her to open the box with her own key, thus absolutely controlling the access of the plaintiff to that which she had deposited within the safe. The vault was the defendant's and was in its custody and its contents were under the same conditions. As well might it be said that a warehouseman was not in possession of silks in boxes deposited with him as warehouseman because the boxes were nailed up and he had no access to them." See also Cussen v. South California Savings Bank, 133 Calif. 534; Roberts v. Safe Deposit Co. 123 N. Y. 57; Safe Deposit Co. v. Pollock, 85 Pa. St. 391.

We think the above authorities clearly sustain the position that the appellant, in law, is in possession of the property of its lessees deposited in the safety deposit boxes or safes which it rents to them, and while it may not have knowledge of the character amount or quantity of the property which its lessees have deposited in the safety deposit boxes or safes leased from it, nevertheless it is in the legal

custody and control of such property. True, while a lessee is living by the terms of the lease with the appellant he has access to the box or safe and upon his death the duty devolves upon the appellant to hold the contents of his box or safe and to deliver them to those persons, only, to whom they belong or to whom the law directs they shall be delivered, and such delivery must be made at the appellant's peril. We conclude, therefore upon the death of a lessee of a safety deposit box or safe, the contents of such box or safe are in the possession and control of the appellant, and the same duty rests upon it as rests upon every other bailee who finds himself in the possession of property that belongs to a bailor who has died during the
80 existence of the bailment, that is, to deliver the bailment to the party or parties upon whom the law casts the title with the right of possession. The law is also well settled that the right to take property, either real or personal, by inheritance or by bequest or devise is purely a statutory right and one which rests wholly within legislative enactment, and the State, acting in its sovereign capacity by appropriate legislation may regulate and control the devolution of property after the death of the owner. Evans v. Price, 118 Ill. 593; Wunderle v. Wunderle, 144 id. 40; Kochersperger v. Drake, 167 id. 122; Billings v. The People, 189 id. 472; in re Estate of Speed, 216 id. 23; in re Petition of Mulford, 217 id. 242; in re Estate of Graves, 242 id. 212;

In the Kochersperger case, on page 125, the court said:

"The laws of descent and the right to devise and take under a will within the State of Illinois owe their existence to the statute law of the State. The right to inherit and the right to devise being dependent on legislative acts, there is nothing in the constitution of this State which prohibits a change of the law with reference to those subjects at the discretion of the law-making power. The laws of descent and devise being the creation of the statute law, the power which creates may regulate and may impose conditions or burdens on a right of succession to the ownership of property to which there has ceased to be an owner because of death, and the ownership of which the State then provides for by the law of descent or devise." and in the Graves case, on page 216, it was said: "The descent of property in this State, whether by inheritance or devise, is
81 regulated entirely by statutory provisions."

It has been decided by this court that an inheritance tax is a tax upon the right of succession and is not a tax upon the property itself. Kochersperger v. Drake, supra; Estate of Merrifield v. The People, 212 Ill. 400.

It is obvious that the money received by the State in the form of inheritance taxes constitutes a part of the public revenue of the State, and by numerous adjudicated cases it has been determined that the right of the State to such taxes is a vested right, and that such right vests in point of time at the time the estate vests,—that is, upon the death of the decedent. (in re Estate of Graves, surpra) The State, therefore, has a vested financial right in the estate of every decedent in this state which is subject to the payment of an inheritance tax, and that right is equal in degree to that of the per-

sonal representative, the heir or devisee of the decedent, and it vests at the same moment of time that the interest of the personal representative, heir or devisee vests. In the Graves case, on page 216, this court said: "All the property owned by any person at his decease passes either under the statute of descent, to the persons mentioned in that statute, or under the Statute of Wills to his devisees. In either event it passes subject to the indebtedness of the decedent and the expenses of administration, and to no other charges. The Inheritance Tax Law provides that all property so descending, whether under the Statute of Wills or the Statute of Descent, shall be subject to a tax, at certain specified rates, at the fair market value thereof, which shall be due at the death of the decedent. The tax is not upon the estate of the decedent but upon the right of succession and it accrues at the same time the estate vests, that is, upon
82 the death of the decedent. Questions may arise as to the persons in whom the title vests, and such questions may affect the amount of the tax and the person whose estate shall be chargeable with it; but when those questions are finally determined their determination relates to the time of the decedent's death. No changes of title, transfers or agreements of those who succeed to the estate among themselves or with strangers, can affect the tax. All questions concerning it must be determined as of the date of the decedent's death."

In the matter of the estate of Stanford, deceased, 126 Cal. 112, the court had under consideration a statute of the state of California, which, in part and in effect, surrendered to the beneficiary all the tax which had accrued in certain cases under a prior law. The Constitution of California prohibited the Legislature from releasing or extinguishing in whole or in part, the indebtedness, liability or obligations of any corporation or person to the State. As to estates which had become subject to the tax under the prior law but in which the tax had not been paid, the court held that the amendatory act under consideration was invalid, as infringing the constitutional provision above referred to. The Court placed its holding upon the ground that the State, upon the death of the decedent, acquired a vested interest in the tax due the State. Upon that point the Court said:

"This being so, and the Legislature in this case having determined that ninety-five per cent of the decedent's estate may go to his heirs and beneficiaries and that five per cent be retained to the State, it is too clear for argument that this five per cent vested in the State at the same time that the ninety-five per cent vested in the heirs or other beneficiaries. An estate is vested when there is an
83 immediate right of present enjoyment or a present fixed right of future enjoyment. (Kent's Commentaries, 202). The State here, from the death of the decedent, has a present fixed right of future enjoyment to the five per cent of his estate. This is property or a thing of value belonging to the State."

It is clear, therefore, that the State has an interest in every estate that is subject to the payment of an inheritance tax, and in all such proceedings the Attorney General, or some other designated officer,

as the representative of the State. (The People v. Sholem, 238 Ill. 203). We think, therefore, that the conclusion from what has been said, logically and necessarily follows that where a lessee of the appellant dies leaving property in one of the safety deposit boxes or safes of the appellant the State, by its proper representative, has the right to be advised whether or not it shall ultimately be established that it has an interest in such property and of the time when the property will be surrendered, and delivered by the appellant to the personal representative, heir or devisee of the decedent, for the purpose of becoming informed as to whether the succession to such property is subject to an inheritance tax. If such were not held to be the law, all moneys, securities or other valuables held by the appellant in its safety deposit boxes or safes for its lessees, upon the death of a lessee might be transferred to parties other than the State or its representatives and immediately removed to a foreign state or country or concealed or otherwise disposed of, and the true owner of the property, in part, that is, the State, be deprived of all right to enjoy the use and possession of such property. It therefore legitimately follows, we think, that the provisions of section 9 which require the representative of the State to have notice of the
84 time when property held by safety deposit companies, the former owners of which are deceased, is to be surrendered, and removed from the custody of the safety deposit company and delivered to the personal representative, heir or devisee of the decedent, are not an unreasonable measure to protect the State from loss of property in which it has a vested right. Neither do we think, as will hereafter be shown, that the appellant or the personal representative, the heir or the legatee of the decedent is deprived of any constitutional right by requiring that the representative of the State be given notice of such surrender and delivery, nor can we see that the appellant will be deprived of any of its constitutional rights by making it liable for the amount of the inheritance tax in case it violates the clear mandate of the law and parts with the possession of such property without giving notice to the State of such removal and delivery or in being penalized for so doing.

It is obvious, should doubts arise as to whether an inheritance tax is due on the succession of property held by a safety deposit company whose former owner is dead, or as to the amount of such tax, the courts will always be open, upon the application of the safety deposit company, the State or those interested, to adjudicated upon such questions as may arise and solve the doubt so that the appellant's expressed fear that it might be wrongfully required to pay an inheritance tax upon property which it had supposedly properly surrendered and delivered or be penalized for the infraction of the statute and mulct in costs is, we think, a groundless fear. From what has been decided, it follows that it is our view that section 9 of the act of 1909 is a valid enactment so far as it covers property held by a safety deposit company and which had been deposited in a safety deposit box, or safe, in a case where the sole lessee of such safety deposit box or safe had died leaving his property in a safety
85 deposit box or safe and in the custody of and under the control of the appellant, it being our view that in consideration

of such enactment the appellant has no more right, under the constitution, either State or National, to ignore the property rights of the State and to surrender and deliver property thus situated by turning it over to the personal representative, heir or devisee of the decedent, than it would have to deliver the same to the State to the entire exclusion of the rights of the personal representative, heir or devisee of the deceased. All the parties in interest for whom the appellant, as a safety deposit company, holds property thus situated, are under the law entitled to be informed of the conditions and amount of such property so found in safety deposit boxes or safes, before the appellant parts with the possession thereof. This would be the law which would govern any other bailee under like circumstances if the statute had not been enacted, and we think no valid reason is or can be assigned why such should not be held to be the law in view of said statute governing safety deposit companies.

It is contended by the appellant that even though the constitutionality of section 9 of the act of 1909 should be sustained when applied to property found in a safety deposit box or safe where the sole lessee of such receptacle is dead, it is clearly unconstitutional when applied to property found in a safety deposit box or safe where there are joint lessees and one of the lessees is dead, even though the lessees were not jointly interested in the contents of such safety deposit box or safe and the property was not commingled in the safety deposit box or safe; and that the enforcement of the statute would be far more objectionable on constitutional grounds where one of two or more lessees was deceased and the property found in a safety deposit box or safe was owned jointly by the lessees
86 or where the lease was made by a co-partnership and the property belonged to the co-partnership and one of the co-partners had died and the surviving joint owner or the surviving partner or partners were seeking to have the joint property or co-partnership property surrendered and delivered to such joint owner or surviving partner or partners. As to the case of the death of one of two or more joint lessees, where the property of such joint lessees was deposited in the safety deposit box or safe but the property of the several lessees has not been commingled and the property of the surviving lessees could be readily separated from the property of the deceased lessee, we see no difficulty in the way of the enforcement of the statute. All that would be necessary for the appellant to do to protect the rights of the surviving lessee would be to deliver to him his property and protect the parties representing the deceased by holding the property which belonged to the deceased lessee. If inconvenience arises it would arise out of the joint relation of the parties, and might as readily arise between the appellant, the surviving lessee and the personal representative or heir of the decedent as between the appellant and the surviving lessee and the State. Whatever inconvenience to the appellant or the surviving lessee would be caused by the joint occupancy of the safety deposit box or safe would be necessarily an inconvenience which they must have contemplated when they entered into the

joint relation, and would we think, place each of them in a position where they could not object to the owners of the property who succeeded to the rights of the deceased joint lessee (which would include the State) from obtaining their full rights in the property of the deceased lessee found in such safety deposit box or safe. We therefore conclude that there is no constitutional objection to the
87 enforcement of the statute as to property owned jointly by a deceased lessee and another and deposited in a safety deposit box or safe, where the property of the several lessees has not been commingled by the acts of the parties but has been kept separate. We think it can be said that where the property of joint lessees has been commingled or is jointly owned by the lessees upon the death of one of the joint lessees the parties who succeeded to the rights of the deceased joint lessees (which would include the State) would have the right, as against the appellant and the surviving lessees to have the amount, character and value of the property deposited jointly in such deposit box or safe determined before the property is surrendered or delivered by the appellant and to have the property belonging to the parties who succeeded to the rights of the deceased lessee valued and determined and that the appellant and the surviving joint owners who had assisted in creating such joint relation could not complain of the enforcement of the statute, which was enacted for the determination of the rights of the parties (which would include the State) who succeed, in part, to the rights of such deceased owner. Clearly, when the joint relationship was formed it was known to all joint owners who entered into the relation as well as to the appellant, that if the death of one of the joint owners intervened before the joint relationship was terminated it would be necessary to determine the question of each joint owner's interest in the property. We think the same course of reasoning which controls where property is found in a safety deposit box or safe which was leased jointly and where the property of each lessee has been kept separate and apart, must in favor of the State and all others interested in the property, be applied as against the appellant and the joint surviving owner who had commingled his property with a joint lessee who has died and that the statute can be enforced in the same manner against the appellant and the joint surviving lessee who has voluntarily commingled
88 his property as against appellant and a joint lessee who had kept his property separate.

We, therefore hold the act constitutional in the latter as well as the former case.

A more difficult question is presented when the safety deposit box or safe has been leased by a co-partnership and one member of the co-partnership has died leaving co-partnership property remaining in such safety deposit box or safe. We think, however, if it be borne in mind that the co-partnership by the death of a co-partner is dissolved and that while the assets may be lawfully retained by the surviving member *of* surviving members of the co-partnership they ultimately must account to the personal representative of the deceased partner for his share and that the inheritance tax will only

be assessed upon the succession to what may remain after the partnership debts are paid, it must be held that the statute applies to a co-partnership lease and to co-partnership assets. We can see no objections to the personal representative of the deceased partner, and all other persons who have or will have an interest in his estate (which would include the State) being informed as to the amount, character and value of the co-partnership assets in a leased co-partnership safety deposit box or safe at the time of the dissolution of the partnership by the death of a partner. In the Graves case, supra, it was held that while questions may arise as to the persons in whom the title rests, and such questions may affect the amount of the inheritance tax and the persons whose estate shall be chargeable with it, still, when those questions are finally determined, their determination relates back and becomes fixed as of the date of the death of the decedent. It cannot be legitimately urged that the true object of the organization of the safety deposit company is to furnish receptacles where parties may secrete their prop-
89 erty from the eye of the tax-assessing and tax-collecting officer of the State, with a view to escaping taxation, or that when property is found in the possession of a safety deposit company which formerly belonged to a person who has since died, or in which he is interested that it should not be taxed, and we think no valid reason can be suggested why every person interested in property thus found (which would include the State) has not the right, whether it be held individually or jointly or by a co-partnership, to know the amount, value and kind of such property. When a partnership is dissolved by the death of a partner or partners to inventory the partnership estate, to have it appraised and to file a list of liabilities—in short, to make a full showing of the partnership estate. It has never been thought that statutes of that character were unconstitutional by reason of the fact that the surviving partners were required thereby to disclose the partnership assets or spread upon the records of the County court the secrets of the business of the partnership.

The whole scope and object of section 9 is to require a disclosure of the assets of the deceased person—not alone those which are deposited in safety deposit vaults, but such as are held by trust companies, corporations, banks or other institutions or by any person or persons; and there is no valid reason why, when assets are deposited in the safety deposit boxes or safes of a safety deposit company for safe keeping, the State, and every other person having a property right in such deposit, upon the death of the depositor should not be permitted at the time such assets are withdrawn from the vaults of the safety deposit company, to be informed of their character, value and amount. We are fully convinced that the statute legitimately places the State in the same position as any other owner in regard to its right to be informed as to the value of the assets of a deceased lessee, and that the right of the State
90 to secure such information rests on valid constitutional grounds.

We will now consider in detail some of the objections which are

specifically urged by counsel for the appellant against the constitutionality of section 9.

It is first contended that the section impairs the obligation of the charter of the appellant. The charter of the appellant, which is its contract with the State, provides that it is organized,

"For the express purpose of providing a suitable building or buildings with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise and to carry on the business of safety deposit and storage." In pursuance of its corporate powers it has provided a building and entered upon the business of renting safety deposit boxes and safes and we are unable to ascertain wherein section 9 impairs takes from or infringes any of the powers of the appellant granted to it by its charter. Section 9 in no way deprives the appellant of the right of constructing or renting a building, vaults, etc. or of renting its safety deposit boxes or safes, or deprives it of its right to act as a depository for hire and to receive and accept for deposit all securities or other valuables which may be delivered to it by its lessees, or prevents it from delivering to the rightful owner or owners of or persons entitled to all or any of such securities or other valuables as may have been delivered to it, upon the determination of the relation which is created between it and its lessee. The utmost that can be said is, that upon the termination of the relation which has been created between the appellant and a lessee by the death of such lessee it cannot part with the possession of or surrender the securities or other valuables which have been placed in its leased safety deposit box or safe without pursuing the method contained in section 9 to the end that if there is due upon the succession of the property deposited with it an inheritance tax, the amount of such inheritance tax
91 may first be determined and collected. The law has always been that a bailee must deliver the bailment to the person to whom it belongs, upon the termination of the contract of bailment and all the legislature has done is to pass a statute which vests the State with an interest in the estate of a deceased person and which is subject to an inheritance tax, and which provides that where the bailment is terminated by the death of the lessee and the property is to be surrendered by the safety deposit company the State shall be treated as a part owner of such bailment and receive notice through its appropriate officer of the proposed surrender to the end that it may receive and be paid its proper proportion of the property so deposited with the appellant. This, as has heretofore been determined, is not an unreasonable or unconstitutional regulation that the State has the right to modify, regulate or impose conditions upon the right of succession, by inheritance or by will, to property which was owned by a person who has died there can be no question (in re estate of Speed, supra) and the right to take property in pursuance of descent or will is wholly statutory and that such right may be changed by the legislature is unquestioned (Kockesperger v. Drake, supra; In re estate of Speed, supra; in re petition of Mulford, supra). The right to bequeath or devise property by will or to take by inheritance can be enjoyed only because

such right is conferred by statute. (Evans v. Price, supra; Wunderle v. Wunderle, supra.) The proposition that the State has the right to provide for an inheritance tax and to levy the tax upon the right of the succession to property, and to provide that the State shall take a vested interest in the estate immediately upon the death of the deceased has become in this State axiomatic. We do not think, therefore that a law which, in fact, only requires that the appellant shall not without notice to the State, deliver the property which it has received into its vaults where the owner or part
92 owner of such property has died since its receipt by the appellant, and, if it is subject to an inheritance tax, not deliver the same until the tax is paid, without the consent of the State can rightfully be said to infringe upon the charter rights of the appellant.

It is also contended that the appellant is deprived of property and liberty without due process of law, and that it is deprived of the due protection of the law by said section 9. Having heretofore reached the conclusion that a safety deposit company is in possession and control of the securities and other valuables delivered to it by its lessees and that the relation of bailee and bailor exists between the safety deposit company and its lessee and that upon the contingency of the death of a lessee who is an owner, in whole or in part, of property in the possession of the safety deposit company the safety deposit company may rightfully hold such deposit, and must hold it, until it can deliver it to the true owner, and that the State is a part owner of the deposit in case it is subject to the payment of an inheritance tax, we think by the terms of section 9 the appellant's right of contract is not infringed upon and that it is not deprived of liberty, property or the due protection of the law. In short, that section 9 provides first for the determination of the question, is the property subject to an inheritance tax, and if it is that it must be paid before the appellant can rightfully part with the possession of the property. In this connection the objection to the statute that the appellant is made a trustee and tax gatherer without its consent may be considered, and the answer to these propositions will, we think, demonstrate the fallacy of the argument that the appellant has been deprived by the statute of liberty, property and the due protection of the law. The appellant is not a trustee in the ordinary sense, but a bailee, and the fact, if it were a fact, that it is used, in part, as a tax-assessing and tax-collecting officer, would not invalidate the statute. Numerous statutes have been passed by the legisla-
93 ture of this and other states which require banks, trustees, executors, administrators, and agents to return for taxation property in their possession, and such statutes frequently provide that if the banks, trustees, executors, administrators and agents holding such property surrender the same without the tax thereon being paid, they shall be liable for the tax. Walton v. Westwood, 73 Ill. 125; Ottawa Glass Co. v. McCaleb, 81 id. 556; Lockwood v. Johnson Collector 106 id. 334; Warren v. Cook, 116 id. 190; People's Loan & Homestead Ass'n v. Keith, 153 id. 609; Scott v. The People 210 id. 594. In many instances the corporations have

been made collecting officers by being required to deduct the taxes from the stockholders' interests and pay them over to the State. Haight v. P. Ft. W. & C. R. Co. 73 U. S. 15; National Bank v. Commonwealth 76 U. S. 353; U. S. v. B. & O. R. Co. 84 U. S. 322; Minot v. Philadelphia W. & B. R. R. Co. 85 U. S. 230; Maltby v. Reading & C. R. Co. 52 Pa. 140 and in Citizens National Bank v. Kentucky 217 U. S. 443, the revenue law of Kentucky which charged a bank with the duty of collecting the taxes on shares was sustained.

Mr. Cooley in his work on Taxation, Vol. 2 (3rd ed.) p. 832, in discussing this subject says:

"For the most part, the taxes levied by the States are collected of the persons taxed or enforced against the property in respect to which they are imposed. In a few cases, however, in which such a course could not work injustice, the state may reach the party taxed by indirection, and collect, in the first instance, from some one else, who in turn will become collector from the person on which the tax is really imposed. The reason for this is that in such cases it is more convenient to the state and perhaps makes more certain the collection, and it could be resorted to only when the case is such that injustice could result to no one. A case of the kind is where a tax is imposed on the dividends or other
94 receipts of shareholders from the profits of corporations, or upon their shares, or upon the interest paid by indebted corporations, and where the corporation is required to make the payment, which it would then deduct from the payment to be made to shareholders, or to the holders of the evidences of indebtedness. There is no doubt of the right to do this, except as to payments to be made to non-residents, nor even as to them if the statute under which their interests were acquired provided for the levying and collecting of taxes in that manner. Other instances are where a tax is required under a lease, the amount of which tax may be deducted from the rent, or where the person having the custody of distilled spirits is obliged to pay the tax thereon, he being given a lien on them for what he so pays"; We conclude the appellant is not deprived of its liberty, property or due protection of the law or wrongfully made a trustee or tax gathering agent against its will.

It is also urged that the property of the lessees of appellant is subject to unreasonable searches and seizures. In the case of People ex rel. Match v. Reardon, 184 N. Y. 431, and People ex rel. Ferguson v. Reardon, 197 N. Y. 236, the constitutionality of a statute was sustained which required the transferee of corporate stocks to keep a record of such transfer or transfers for the information of the tax levying and tax-gathering officers and in the corporation tax cases Flint v. Stone-Tracy Co. 31 Supreme Court Reporter, page 343, the Supreme Court of the United States sustained the constitutionality of a statute which required the corporations which fell within the purview of the statute then under consideration to keep a record for the inspection of the revenue officer which shows the net incomes of such corporations. In the Flint case Mr. Justice

Day who spoke for the court, in the course of his opinion (p. 368) said:

95 "It is urged in a number of the cases that in a certain feature of the statute there is a violation of the 4th Amendment of the Constitution, protecting against unreasonable searches and seizures. This amendment was adopted to protect against abuses in judicial procedure under the guise of law which invade the privacy of persons in their homes, papers and effects, and applies to criminal prosecutions and suits for penalties and forfeitures under the revenue laws. Boyd v. United States, 116 U. S. 632, 29 L. ed. 761; 6 Sup. Ct. Rep. 524. It does not prevent the issue of search warrants for the seizure of gambling paraphernalia and other illegal matter. (Adams v. New York, 192 U. S. 585; 48 L. ed. 575; 24 Sup. Ct. Rep. 372. It does not prevent the issuing of process to require attendance and testimony of witnesses, the production of books and papers, etc. Interstate Commerce Commission v. Brimson, 154 U. S. 447; 38 L. ed. 1047; 4 Inters. Com. Rep. 545; 14 Sup. Ct. Rep. 1125; Interstate Commerce Commission v. Baird, 194 U. S. 25; 48 L. ed. 860; 24 Sup. Ct. Rep. 563. Certainly, the amendment was not intended to prevent the ordinary procedure in use in many, perhaps most, of the States, of requiring tax returns to be made, often under oath."

In the cases heretofore referred to the assessed corporations or individuals were required to keep a record for the information of the tax assessing and collecting officers, while the statute under consideration here requires only that notice be given, and that the representatives of the state be permitted to be present at the time the property is surrendered. The representative of the State, in this instance, gets the information first hand, while in the instances covered by the Reardon and Flint cases the tax officers obtained the information from a record which those statutes required be kept for their information. If the legislature or Congress may require such record to be kept, we see no reason why the

96 information, which is the important thing, may not be required to be given direct to the tax officer.

It is finally contended that the property of the appellant and its lessees is devoted to a public use without just compensation, in this; that it is held pending the notice to the officers of the liability to the succession of the property to be subjected to an inheritance tax. If the required notice is lawful and the determination of the question whether the succession to the property in the possession of the safety deposit company is subject to the payment of an inheritance tax is proper, then there is no infringement upon the constitutional provision either State or National, which forbids property to be taken for public use without just compensation. In the very nature of things, in the settlement of estates of deceased persons there must be some delay in determining who is entitled to receive the estate, and as we have heretofore held, when the appellant leases its safety deposit boxes and safes, it and its lessees must necessarily have contracted with reference to the inevitable fact that some of its lessees will die pending the continuation of their leases. This being true, we think it manifestly follows that ap-

pellant's leases are made and the rent therefor is fixed upon the contingency that in case of the death of a lessee pending the lease there will be some delay in the delivery of the property of the lessee to the true owner by the appellant. The only damage that the appellant should incur in such cases would be the loss of box or safe rent during the time of said delay, which, upon a safety deposit box or safe which rents for $5.00 a year, would be inconsiderable, and we must conclude as to the appellant that the question of box rent or safe rent is a matter that was taken into consideration
97 when the lease was executed. As the lessee is dead he clearly will be deprived of nothing by reason of such delay. Those persons who are to succeed to his estate take what they get only by force of the Statute of Descent and Statute of Wills, and as the inheritance or bequest which they receive comes to them burdened with the inheritance tax which the law places upon their right of succession, they necessarily take their inheritance or bequest subject to the costs, expenses and damages accruing out of the delays which must intervene before they may enjoy their inheritance or bequest.

We, therefore conclude that neither the appellant nor its lessees are, within the meaning of the law, deprived of property for a public use without just compensation.

We have given this case the patient care which its importance demands, and have reached the conclusion that section 9 of the Inheritance Tax Law of 1909 is a valid and constitutional enactment.

The decree of the circuit court will be affirmed.

Decree Affirmed.

Farmer, Vickers and Cooke, J. J. Dissenting.

98 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield on Tuesday, the Sixth Day of June, in the Year of Our Lord One Thousand Nine Hundred and Eleven, Within and for the State of Illinois.

Present:

The Honorable Orrin N. Carter, Chief Justice.
Honorable James H. Cartwright, Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable John P. Hand, Justice.
Honorable Alonzo K. Vickers, Justice.
Honorable George A. Cooke, Justice.
William H. Stead, Attorney General.
Warren C. Murray, Marshal.

Attest:
J. McCAN DAVIS, *Clerk.*

Be it remembered, that to-wit: on the 20th day of June, A. D. 1911, the same being one of the days of the said October term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

JUNE 20TH, A. D. 1911.

Appeal From Circuit Court of Cook County.

No. 7510.

NATIONAL SAFE DEPOSIT COMPANY, Appellant,

vs.

WILLIAM H. STEAD, Attorney General; ANDREW RUSSEL, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Appellees.

Error to —.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Decree aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error:

Therefore, it is considered by the Court that the Decree of the Circuit Court aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

99 *Authentication of Record.*

SUPREME COURT,
State of Illinois, ss:

I, J. McCan Davis, Clerk of said Court, do hereby certify that the foregoing is a true full and complete transcript of the record and proceedings in the case of National Safe Deposit Company, Plaintiff in Error, vs. William H. Stead, Attorney General; Andrew Russel, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney of the State of Illinois, Defendants in Error, and also of the opinion of the Court rendered therein as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 4th day of December A. D. 1911.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1913.]

J. McCAN DAVIS,
Clerk Supreme Court.

100 Be it remembered, that to-wit, on the 28th day of November A. D. 1912 there was duly filed by the National Safe Deposit Company in the office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. Orrin N. Carter, Chief Justice of the Supreme Court of Illinois with the original order by the said Chief Justice upon the said petition allowing said writ of error, which documents are in words and figures as follows, to-wit:

101 In the Supreme Court of the United States, to the October Term, 1912.

NATIONAL SAFE DEPOSIT COMPANY, a Corporation, Plaintiff in Error,

vs.

WILLIAM H. STEAD, Attorney General; ANDREW RUSSEL, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Defendants in Error.

Error to the Supreme Court of Illinois, There Heard on Appeal from Circuit Court of Cook County, Illinois.

Bill in Equity.

Petition for Writ of Error.

To the Honorable Orrin N. Carter, Chief Justice of the Supreme Court of Illinois:

National Safe Deposit Company, a corporation under the laws of the State of Illinois, by this petition respectfully shows:

That on and prior to the twentieth day of June, 1911, a Bill in Chancery was pending in the Supreme Court of Illinois on appeal from a decree of the Circuit Court of Cook County, Illinois, dismissing said bill for want of equity on sustaining a demurrer of the defendants thereto, in which said bill your Petitioner was complainant below and appellant above and William H. Stead, Attorney General of the State of Illinois, Andrew Russel, then State Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney, were defendants below and appellees above, on appeal.

That in and by said Bill of Complaint the validity of a Statute of the State of Illinois was drawn in question on the ground of its being repugnant to the Constitution of the United States, to-wit:

Section 9 of an act passed by the General Assembly of the
102 State of Illinois, entitled "An Act to tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in Certain Cases, and to Provide for the Collection of the Same," which went into effect July 1, 1909, which Section 9 reads as follows:

"If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent liable to any such tax, the

tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution person or persons having in possession or under control securities, deposits, or other assets belnging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to, or standing in the name of, a decedent, or belonging to, or standing in the joint names of, a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the shares
103 of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction."

That in said Bill of Complaint your Petitioner recites that it was incorporated in 1881 for the express purpose of providing a suitable building with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise, and "to carry on the busi-

ness of safety deposit and storage." That Petitioner from that time to the present has built up a successful business consisting mainly of renting for hire safe deposit boxes or safes specially constructed for that purpose, in its vaults, for the safe keeping of money, securities of all kinds and valuables. That the lease, or contract, under which these boxes are rented, is a lease "of Safe No. — in the vaults of this company, for the term of," etc. That the terms of liability are limited to the exercise of ordinary diligence to prevent the opening of the safe by any person other than the renter, or his duly authorized representative. That the rules and regulations further provide and are premised on the condition of "the contents not being known to the company," and the first rule is that "no one except the renter or his deputy, to be designated in writing on the books of the company, or in case of death his legal representatives, to have access to the safe." That there are further provisions recited in said bill looking to caution against loss, and preservation of secrecy, and prevention of intrusion into the vaults, a rule respecting changing of locks in case of lost keys, a reservation of right to terminate rentals on written notice, and regulations as to the hours for opening and closing the vaults. That there is just one contingency
104 provided on which the company may open the box—holding over under a lease without payment of rent, after ten days' mailing notice to the renter—analogous to a forfeiture clause in an ordinary lease.

That the bill then recites that of the 13,291 safes in its vaults, 9,702 are under the contract of rental aforesaid, and that approximately 4,104 of said boxes are rented and held jointly by more than one individual, any one of whom has the right and privilege of keeping property in their jointly rented box and of having access thereto exclusively with his joint renters. That there are in addition approximately 316 boxes rented and held by co-partnerships. That the demand for joint rentals is constantly increasing and constitutes a considerable portion of Petitioner's business, and that as a matter of law, it is advised that it owes to all of the joint renters, as well as individual customers, the duty of safe-keeping and undisturbed possession.

That the ordinary course of business in respect to opening boxes is that they can only be opened by two keys, one of which is held by the renter and the other by the Company, and that it requires the joint action of the customer and the company to secure access to the contents of the boxes, the company retaining no means of access to the contents by itself alone, and possessing no means of knowledge or information as to the ownership of the securities deposited in the rented boxes beyond the fact that a certain box is rented as aforesaid. That only in certain emergencies specified in the contract of rental and out of the ordinary course of business, does the company have anything to do with the opening of boxes except by co-operation with the renter. That these are, in the case of lost keys reported to the Company, when in the presence of the renter which is
105 insisted upon, the lock on the box is drilled out and replaced with new lock and keys; and in the case of abandonment of

a box by a renter, evidenced by his failure to renew the lease, the company sometimes exercises the right, on notice, as provided in the lease, to drill out the lock and withdraw and hold the contents of the box at the disposition of the renter. That sometimes, too, on the decease of a renter without administration papers, when persons identified as next of kin represent that there is a will of the deceased renter in the box, the company allows such next of kin, if they have the key, to open the box in the presence of the company's agent, and, without removing any of the contents, look for the will, which if found is either deposited in the Probate Court, or delivered to a Probate Court representative by the company; and in some instances when the next of kin represent that the key could not be found, the lock has been drilled and changed at their request and in their presence. But as a matter of law, the complainant is advised it does not have the contents of said boxes in its possession or control, except as the same is implied as a matter of law from the fact that such boxes are located on its premises, and that the course of business is as above set forth.

That said Section 9 of the Inheritance Tax Law, which went into effect July 1, 1909, presumes a safe deposit company has in possession or under control the contents of the boxes, and prohibits it from delivery or transfer of the same to the representatives of deceased box holders, or to the survivors of them in case of joint holdings, unless the Attorney General and State Treasurer are notified ten days prior to transfer, and not then without retaining sufficient portion or amount thereof to pay any tax or inter-
106 est which may thereafter be assessed. And that it is made lawful for the State Treasurer and Attorney General "to examine said securities, deposits or assets at the time of such delivery or transfer," and that failure to serve the notice or allow the examination, or to retain sufficient to pay the tax, not only makes the deposit company liable for the tax, but adds a penalty of $1,000 to be enforced by suit.

That under this law the Attorney General and State Treasurer, and the Inheritance Tax Attorney, an officer intrusted under Section 16 of said Inheritance Tax Law with the ascertainment and collection of inheritance taxes and further being specifically authorized by the Attorney General and State Treasurer to enforce said Section 9, claim the right to compel your Petitioner to deny to personal representatives and to the survivors of joint and business partnership renters, control over and liberty to remove the contents of the boxes without ten days' notice to, and the consent of, said officials, or unless a sufficient portion of said contents is retained by appellant to pay any tax and interest that may thereafter be assessed on account of the taking possession of the contents by the personal representatives or by surviving joint or partnership renters as the case may be. That the officials in effect claim that your Petitioner has, upon the death of a box renter, a right of access to and control over the contents of any such box with power to deny to the persons entitled thereto the right of control and removal thereof, with the power in itself to retain a portion of the contents sufficient to pay

any tax thereafter to be assessed upon the property in the box. That the officials claim the right to examine the contents of any such box at the time of the removal of the contents by the person legally entitled thereto. That all of these claims are in conflict not
107 only with the obligations imposed upon your Petitioner by its contracts aforesaid, but with the constitutional rights of the box renters and their personal representatives and especially with the constitutional rights of such surviving joint or partnership renters not to have their property taken without due process of law, nor to have their papers and effects unreasonably searched and seized. That the officials not only claim that your Petitioner has this right of interference with the contents of its customers' boxes, but insist that your Petitioner shall in fact interfere in the manner stated above, and deny control of their property to survivors and allow the said officials to make examinations of the contents and threaten your Petitioner with the penalties described in said act for non-compliance with its provisions.

That all these acts, assuming to give Petitioner and said officials access to and control over the property of deceased persons and the power to examine, control and hold the property of survivors, and to that extent to interfere with the right of Petitioner to rent boxes to joint tenants and copartnerships, and to make such lawful contracts as it may see fit in the conduct of its business, and in so far as it makes safe deposit companies public officers for the collection of taxes or imposes on them the duties and responsibilities of such public officers, and imposes penalties for refusal and makes them liable for the tax upon property belonging to other persons, and in so far as the law and its illegal methods of enforcement interfere with and seriously threaten the property rights of appellant in the conduct of its safe deposit business, are unconstitutional and in violation of Article I, Section 10, of the Constitution of the United States, providing that no state shall pass any law impairing
108 the obligation of contracts; and of Article IV of the Amendments to the said Constitution, providing that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and of Section 1 of Article XIV of the Amendments to said Constitution, providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

That even if the law is constitutional, which Petitioner denies, it does not, when rightly construed, authorize these officials or Petitioner to deny the right of immediate control of and removal of the contents of partnership boxes to the surviving partners, nor would it authorize Petitioner so to interfere on its own motion. That the word "joint" wherever it is used in Section 9, means joint renters or owners who are not partners, and them only.

That the bill concludes by asking that said Section 9 be declared unconstitutional, or if held valid, that it may be construed by instructions from the court as to appellant's fiduciary and trust rela-

tions in the premises, and that it should be declared in that case not to require Petitioner, or the said state officials, to interfere directly or indirectly with the property of the survivors of joint or partnership renters of boxes, and that the said officials be restrained by injunction from further enforcing against Petitioner the provisions of said Section 9, or, if it be declared constitutional, from enforcing against Petitioner and its customers the erroneous constructions aforesaid.

That a general demurrer interposed by all the defendants was sustained to the bill by the Circuit Court of Cook County, and
109 your Petitioner thereupon appealed to the Supreme Court of the State of Illinois from the decree dismissing the said Bill.

And your Petitioner shows that on the 20th day of June, 1911, said Supreme Court of Illinois rendered a judgment and decree against your Petitioner in said cause, and in favor of the validity and constitutionality of said Section 9, and said Supreme Court of Illinois, in its opinion in affirmance of said certain judgment and decree of the Circuit Court of Cook County, Illinois, among other things, held:

That your Petitioner is not deprived by said Section 9 of any constitutional right, nor is the personal representative, heir or devisee of a deceased box-renter, deprived of any constitutional right, nor is the surviving joint box-renter, nor a surviving partner of a commercial partnership box rental. That the law does not infringe upon the charter rights of safe-deposit companies, nor deprive them of liberty or property rights without due process of law, nor make them tax-gathering agents, nor trustees without their consent. That the provisions of the act are not invalid as subjecting the property of box lessees to unreasonable searches and seizures, nor do they deny to any person the equal protection of the laws; as will appear by reference to the transcript of the opinion of said Supreme Court of Illinois submitted herewith.

And your Petitioner shows that said Supreme Court of Illinois is the highest court of said state in which a decision on said suit could be had.

And your Petitioner claims the right to remove said judgment and decree and the record of said cause to the Supreme Court of the United States by Writ of Error under the Constitution of the United States and under Sections 709, 997, 999, 1003 and 1008 of the Revised Statutes of the United States.

110 And your Petitioner shows, among others, the following reasons and grounds therefor, to-wit:

First. That Section 9 of the Act in question is in conflict with Article I, Section 10, of the Constitution of the United States in that it impairs the obligation of the Safe Deposit Company's legislative grant.

Second. That Section 9 is in conflict with the XIV Amendment to the United States Constitution, in that it deprives Safe Deposit Companies of liberty to engage in a lawful business without due process of law, in seeking to give such companies control and possession of their customers' property in derogation of the essence and purpose of safe deposit business.

Third. That Section 9 is in conflict with the XIV Amendment to the United States Constitution in depriving safe deposit companies of the right of contract as a property right, in penalizing them for failure to exercise an uncontemplated possession and control of their customers' property, destructive of their business, which is forcing an office and duty, as well as a trusteeship, on them against their will.

Fourth. That the Act complained of is in conflict with the XIV Amendment to the United States Constitution in that it arbitrarily singles out Safe Deposit Companies as one class of bailees, and also their customers, for special burdens and restrictions, thereby denying to them the equal protection of the laws.

Fifth. That Section 9 is in conflict with the XIV Amendment to the United States Constitution in that it deprives surviving joint box renters of liberty and property without due process and of the equal protection of the laws, by denying to them the right of exclusive access to their joint box and in interfering with that access under the guise of an inheritance tax investigation directed
111 at another's property.

Sixth. The said Section 9 is in conflict with Article IV of the Amendments to the United States Constitution, in that in imposing on the privacy of box renters, and particularly of surviving joint box renters, it trespasses on the right of the people to be secure in their papers and effects against unreasonable searches and seizures.

Seventh. The interpretation and extension of Section 9 by the Inheritance Tax Officials to include the survivors of commercial co-partnerships holding safe deposit boxes under lease, is in conflict with Article IV and Section 1 of Article XIV of the Amendments to the United States Constitution, depriving such surviving partners of liberty and property without due process, of the equal protection of the laws, and of the right of privacy and security from unreasonable search and seizure.

And your Petitioner shows that the decision of the said Supreme Court of Illinois was against the constitutional title, right, privilege and immunity invoked under the Constitution in each instance, and in favor of the validity of said Section 9. All of which appears from the opinion of said Supreme Court of Illinois herewith submitted.

Wherefore, your Petitioner prays the allowance of a Writ of Error returnable into the Supreme Court of the United States, and for citation for reversal of said judgment, decree and decision of the Honorable Supreme Court of Illinois. And your Petitioner herewith submits an assignment of errors in said judgment, decree and decision of the Honorable Supreme Court of Illinois, and in the record and proceedings in said cause, and makes the same a part hereof, and prays that the same may be considered as further showing the grounds and reasons therein set forth for the allowance of this petition.

112 And your Petitioner further prays that a citation in due form of law may issue requiring the defendants and appellees herein named to appear as defendants in error in the Supreme Court

of the United States at the next October term thereof, and then and there make answer to the assignments of error made by your Petitioner upon the record of proceedings in this cause.

And your Petitioner will ever pray, etc.

NATIONAL SAFE DEPOSIT COMPANY,
Plaintiff in Error, Petitioner,
By MERRITT STARR AND
GEORGE PACKARD, *Solicitors.*

JOHN S. MILLER,
Of Counsel.

112½ [Endorsed:] Gen'l No. —. Term No. —. Supreme Court of United States. Nat'l Safe Deposit Co., Pl'*ft* in Error, vs. William H. Stead, Att'y Gen., et al. Petition for Writ of Error. Filed Nov. 28, 1911. J. McCan Davis, Clerk of Supreme Court. Miller, Starr, Packard & Peckham, 1522 First National Bank Building.

113 In the Supreme Court of the United States, to the October Term, 1912.

No. 7510.

NATIONAL SAFE DEPOSIT COMPANY, Plaintiff in Error,
vs.
WILLIAM H. STEAD, Attorney General, et al., Defendants in Error.

Error to the Supreme Court of Illinois. There Heard on Appeal from Circuit Court of Cook County, Illinois. There Heard on Bill in Equity.

Order on Petition for Writ of Error.

The foregoing petition and assignment of errors in said cause and the record of said cause in the Supreme Court of Illinois having been duly exhibited to me and by me considered;

It is ordered that a Writ of Error be allowed to said Supreme Court of Illinois from said Supreme Court of the United States, and that said writ and a citation thereon be issued, served and returned to the Supreme Court of the United States in due course, according to the statutes in such case made and provided, upon condition that the said Petitioner, Plaintiff in Error, National Safe Deposit Company, give security in the sum of One Thousand ($1,000.00) Dollars that said Plaintiff in Error shall prosecute said writ to effect, and if said Plaintiff in Error fail to make its plea good upon said Writ or Error, shall answer all costs that may be adjudged or decreed on account of said Writ of Error.

114 And the Plaintiff in Error here now presenting the written obligation and undertaking of Daniel Peckham to answer all such costs, the same is hereby approved.

In Witness Whereof I have hereunto set my hand this 24th day of November, A. D. 1911.

ORRIN N. CARTER,
Chief Justice of the Supreme Court of the State of Illinois.

114½ [Endorsed:] Gen'l No. — Term No. —. Supreme Court of United States. Nat'l Safe Deposit Co. Pl'ft in Error vs. William H. Stead, Att'y Gen. et al. Order on Petition for Writ of Error. Filed Nov. 28, 1911. J. McCan Davis, Clerk of Supreme Court. Miller, Starr, Packard & Peckham, 1522 First National Bank Building.

115 In the Supreme Court of the United States, to the October Term, 1912.

NATIONAL SAFE DEPOSIT COMPANY, a Corporation, Plaintiff in Error,

vs.

WILLIAM H. STEAD, Attorney General; ANDREW RUSSEL, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Defendants in Error.

No. —. Bill in Chancery.

Error to the Supreme Court of Illinois.

Assignment of Errors.

And now comes National Safe Deposit Company, a corporation, Plaintiff in Error herein, Appellant in the Supreme Court of Illinois, and Complainant in the Circuit Court of Cook County, Illinois, by Merritt Starr and George Packard, its solicitors, and shows that in the record and proceedings and in the rendering of the judgment and decision and decree of the Supreme Court of Illinois in said above entitled cause, and in the record and proceedings set forth in the transcript thereof, there is manifest error, in this, to-wit:

1. The said Supreme Court of Illinois erred in affirming the action of the court below in sustaining the demurrer of defendants to said bill and dismissing said bill for want of equity.

2. The Supreme Court of Illinois erred in not reversing and remanding the decree of the Circuit Court of Cook County, Illinois, sustaining the demurrer of defendants, and dismissing said bill for want of equity.

3. The Supreme Court of Illinois erred in holding that Section 9 of an Act passed by the General Assembly of the State of Illinois and in effect July 1, 1909, entitled "An Act to tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in certain cases

and to provide for the collection of the same and repealing
116 certain acts therein named", in so far as the same applies to Plaintiff in Error, is constitutional and not void as being in conflict with Article I, Section 10, of the Constitution of the United States.

4. The Supreme Court of Illinois erred in holding that said Section 9, in so far as it applies to Safe Deposit Companies and their customers, is constitutional and not void as being in conflict with Article IV of the Amendments to the Constitution of the United States.

5. The Supreme Court of Illinois erred in holding that said Section 9, in so far as it applies to Safe Deposit Companies and their customers, is constitutional and not void as being in conflict with Section 1 of Article XIV of the Amendments to the Constitution of the United States.

6. The Supreme Court of Illinois erred in not holding that Section 9 of an Act of the General Assembly of the State of Illinois that went into effect July 1, 1909, entitled, "An Act to tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in certain cases, and to provide for the collection of the same, and repealing certain Acts therein named", in so far as its provisions apply to Plaintiff in Error and to Safe Deposit Companies generally, and their customers, is unconstitutional and void as being in conflict with the titles, rights, privileges and immunities provided for in Article I, Section 10, of the Constitution of the United States, in Article IV, Section 1, of the Amendments, or in Article XIV of the Amendments, to the Constitution of the United States, or either of the same.

7. The Supreme Court of the State of Illinois erred in holding that the interpretation and extension of said Section 9 by the Inheritance Tax Officials to include the survivors of commercial
117 co-partnerships holding safe deposit boxes under lease, is constitutional and not in conflict with Article IV, and Section 1 of Article XIV, of the Amendments to the Constitution of the United States, or either of them.

8. The Supreme Court of Illinois erred in not holding that said Section 9, as interpreted and construed by the Defendants in Error, so far as the same is made to apply to the surviving partners of commercial co-partnerships holding safe deposit boxes under lease, is unconstitutional and void as being in conflict with Article IV, and Section 1 of Article XIV of the Amendments to the Constitution of the United States, or either of them.

9. The Supreme Court of Illinois erred in not reversing the judgment and decree of the Circuit Court of Cook County with directions to said Circuit Court to issue the temporary injunction and enter the decree as prayed for in the Bill of Complaint.

Wherefore, the said Plaintiff in Error prays this Honorable Court to examine and correct the errors assigned, and for a reversal of the judgment and decree of the Supreme Court of Illinois entered in the above entitled cause; and that this Court enter its decree.

remanding said cause to the Supreme Court of Illinois with directions and instructions for further proceedings in said cause in conformity with the Constitution and laws of the United States as applicable thereto and found and determined by this Supreme Court of the United States.

NATIONAL SAFE DEPOSIT COMPANY,
Plaintiff in Error,

By MERRITT STARR, AND
GEORGE PACKARD,
Attorneys.

JOHN S. MILLER,
Of Counsel.

117½ [Endorsed:] Gen'l No. —. Term No. —. Supreme Court of United States. Nat'l Safe Deposit Co., Pl'ft in Error, vs. William H. Stead, Att'y Gen. et al. Assignment of Errors. Filed Nov. 28, 1911. J. McCan Davis, Clerk of Supreme Court. Miller, Starr, Packard & Packham, 1522 First National Bank Building.

118 Be it remembered that on the 28th day of November A. D. 1911 there was duly filed in the office of the Clerk of the Supreme Court of Illinois by The National Safe Deposit Company, plaintiff in error, an original bond for writ of error from the Supreme Court of the United States to the Supreme Court of Illinois, in words and figures as follows, to-wit:

119 Know all men by these presents, That I, Daniel Peckham, of the County of Du Page and State of Illinois am held and firmly bound unto William H. Stead, Attorney General, Andrew Russel, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, in the penal sum of One Thousand ($1000.00) Dollars, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators firmly by these presents.

Sealed with my hand and dated this 23d day of November A. D. 1911.

The condition of the above obligation is such That whereas the said William H. Stead, Attorney General, Andrew Russel State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, did on the 20th day of June, 1911, at a term of the Supreme Court of the State of Illinois, then being holden at Springfield in said State, obtain a judgment and decree affirming the judgment and decree of the Circuit Court of Cook County, in the State of Illinois, dismissing a certain Bill of Complaint in equity, wherein National Safe Deposit Company was Complainant Appellant and the said William H. Stead, Attorney General, et al. were Defendants, Appellees, to review which judgment and decree the said National Safe Deposit Company has prayed and obtained a Writ of error from the United States Supreme Court to the Supreme Court of the State of Illinois.

Now, if the said National Safe Deposit Company shall duly prose-

cute said writ of error, and moreover, shall pay the amount of all costs accruing to the said obligees by reason of such writ of error, in case said judgment and decree shall be affirmed, then the above obligation to be null and void; otherwise to remain in full force and virtue.

DANIEL PECKHAM. [SEAL.]

Approved by:
ORRIN N. CARTER,
Chief Justice of the Supreme Court of the State of Illinois.

120 STATE OF ILLINOIS,
Cook County, ss:

I, Oliver A. Bestel, a Notary Public in and for said County, in the State of Illinois, do hereby certify that Daniel Peckham personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 23rd day of November A. D. 1911.

[SEAL.] OLIVER A. BESTEL,
Notary Public.

STATE OF ILLINOIS,
Cook County, ss:

Daniel Peckham being first duly sworn, upon his oath states that he is the person who signed the above and foregoing obligation; that he is a resident of the County of Du Page, in the State of Illinois, and that he is the owner and possessor of real property in his own name and right in Du Page County in said State, free from incumbrances, and liable to execution of the fair and reasonable value of more than Seven Thousand Dollars.

DANIEL PECKHAM.

Subscribed and sworn to before me this 23rd day of November A. D. 1911.

[SEAL.] OLIVER A. BESTEL,
Notary Public.

121 UNITED STATES OF AMERICA,
State of Illinois,
Office Clerk Supreme Court of Illinois, ss:

Be it remembered that on the 28th day of November A. D. 1911, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original writ of error, which is hereby attached and is in words and figures following, to-wit:

122 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of said State in which a decision could be had in the said plea and suit between National Safe Deposit Company, Complainant Appellant in said Supreme Court of Illinois, and William H. Stead, Attorney General, Andrew Russel, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, Defendants Appellees in said Supreme Court of Illinois, the said suit being an appeal from the Circuit Court of Illinois, in and for Cook County, Illinois, in a certain proceeding known as and styled a bill in equity, in which the said National Safe Deposit Company was Complainant and the said William H. Stead, Attorney General, Andrew Russel, State Treasurer, and Walter K. Lincoln, Inheritance Tax Attorney, were defendants, wherein was drawn in question the validity of a statute of the State of Illinois, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, or wherein a title, right, privilege or immunity was claimed by the said Plaintiff in Error under the Constitution of the United States and the decision was against the title, right, privilege or immunity so specially set up or claimed by the said Plaintiff in Error; a manifest error hath happened to the great damage of the said National Safe Deposit Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and Constitution of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 24th day of November, in the year of our Lord, One Thousand Nine Hundred and Eleven.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

JOHN H. R. JAMAR,
Clerk of the Circuit Court of the United States
for the Northern District of Illinois.

Allowed by:

ORRIN N. CARTER,
Chief Justice of the Supreme Court of Illinois.

122½ [Endorsed:] Gen'l No. —. Term No. —. Supreme Court of United States. Nat'l Safe Deposit Co., Pl'ft in Error, vs. William H. Stead, Att'y Gen., et al. Writ of Error. Miller, Starr, Packard & Peckham, 1522 First National Bank Building. Filed Nov. 28, 1911. J. McCan Davis, Clerk of Supreme Court.

123 *Certificate of Lodgment.*

SUPREME COURT,
State of Illinois, ss:

I, J. McCan Davis, Clerk of the Supreme Court of the State of Illinois, do hereby certify that there was lodged with me as such Clerk on the 28th day of November A. D. 1911, in the matter of National Safe Deposit Company, Plaintiff in error, vs. William H. Stead, Attorney General, Andrew Russell, State Treasurer and Walter K. Lincoln, Inheritance Tax Attorney of the State of Illinois, Defendants in error,

1. The original bond of which a copy is herein set forth.
2. A copy of the writ of error to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, Ill., this 4th day of December A. D. — eleven.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1813.]

J. McCAN DAVIS,
Clerk Supreme Court.

124 Be it remembered to-wit, on the Fourth day of December A. D. 1911, a certain Citation was filed in the office of the Clerk of the Supreme Court in words and figures as follows, to-wit:

125 UNITED STATES OF AMERICA, *ss:*

To William H. Stead, Attorney General of the State of Illinois; Andrew Russel, State Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the State of Illinois, wherein National Safe Deposit Company, a corporation, is Plaintiff in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment and decree rendered against the said Plaintiff in Error, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the hand and seal of the Honorable, the Chief Justice of the Supreme Court of Illinois, this 28th day of November, in the year of our Lord, One Thousand Nine Hundred and Eleven.

ORRIN N. CARTER, [SEAL.]
Chief Justice of the Supreme Court of Illinois.

I hereby acknowledge service of the foregoing citation in behalf of William H. Stead, Attorney General, Andrew Russel, State Treasurer, and myself as Inheritance Tax Attorney, defendants in error, this Second (2nd) day of December, A. D. 1911.

WALTER K. LINCOLN.

125½ [Endorsed:] Gen'l No. —. Term No. —. Supreme Court of United States. Nat'l Safe Deposit Co., Pl'ff in Error, vs. William H. Stead, Att'y Gen., et al. Citation. Miller, Starr, Packard & Peckham, 1522 First National Bank Building. Filed Dec. 4, 1911. J. McCan Davis, Clerk of Supreme Court.

126 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Illinois, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Illinois in the City of Springfield, this 4th day of December A. D. 1911.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1813.]

J. McCAN DAVIS,
Clerk Supreme Court of Illinois.

Endorsed on cover: File No. 22,961. Illinois Supreme Court. Term No. 138. National Safe Deposit Company, plaintiff in error, vs. William H. Stead, Attorney General of the State of Illinois; Andrew Russel, State Treasurer of the State of Illinois, and Walter K. Lincoln, Inheritance Tax Attorney. Filed December 9th, 1911. File No. 22,961.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 138.

NATIONAL SAFE DEPOSIT COMPANY,
Plaintiff in Error,

vs.

WILLIAM H. STEAD, Attorney General of the State of Illinois; ANDREW RUSSEL, State Treasurer of the State of Illinois, and WALTER K. LINCOLN, Inheritance Tax Attorney,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is a writ of error to review a judgment affirming the constitutionality of Section 9 of the Illinois Inheritance Tax Law of July 1, 1909, which places restraints and imposes conditions and duties on the conduct of the business of safety deposit in connection with the operation of said law.

The plaintiff in error filed its bill seeking to enjoin the defendants, Inheritance Tax officials of the

State of Illinois, from the enforcement of the provisions of Section 9 of said law against it, on the ground (among others) that the section in question, as it is applied and enforced by the defendants on behalf of said state, to and against complainant and other safe deposit companies, is in conflict with Article I, Section 10 of the United States Constitution and Section 1 of Article XIV of the Amendments to the United States Constitution.

A demurrer was interposed below and sustained to said bill as amended, and the bill was thereon dismissed, and on appeal to the Supreme Court of Illinois, the decision of the court below was affirmed by the majority of the court, divided in the proportion of four to three.

On July 1, 1895, "An Act to tax Gifts, Legacies and Inheritances in certain cases and to provide for the collection of the same," became a law in Illinois. The constitutionality of that Act was thoroughly discussed and approved in *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S., 283. Certain amendments were added in 1901, and on July 1, 1909, a new law went into effect, repealing the enactments above mentioned, and entitled, "An Act to tax Gifts, Legacies, Inheritances, Transfers, Appointments and Interests in certain cases and to provide for the collection of the same, and repealing certain Acts therein named." Beyond stating that in its main features it does not (except Section 9 thereof) vary materially from the former laws in language or theory, and does not specifically attempt to make the tax on gifts, legacies and inheritances a lien on the property or estate of the decedent, we pass to Section

9 of the law, which is the subject of this inquiry, and which does evoke a novel principle and as we believe is in conflict with the Constitution of the United States in certain particulars hereafter set forth. The provision of the section here in question is as follows:

> "No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed

on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction." (Trans., 31; Rec., 49.)

At the time this law went into effect and for nearly thirty years prior thereto, as the bill alleges, the plaintiff in error had been engaged, under its corporate charter, in the maintenance of a suitable building provided with vaults and safes with special regard to protection against loss by fire, robbery or otherwise, and in carrying on the "business of safety deposit and storage." Its enterprise, which grad-

ually assumed large proportions, consisted in the main of renting for hire specially constructed safe deposit boxes or safes, in its vaults, for the purpose of the secret and safe keeping of money, securities and all kinds of valuables. The nature of the business is pretty generally understood, and is set out fully in the bill which we shall summarize later on. The essential features of the business are the renting of space in the form of these boxes, the preventing of access thereto by anyone but the lessee or his duly appointed deputy or personal representative on death, and the underlying fact that the safe deposit company does not know what use the lessee makes of his space, does not handle his securities or contents, has no access to the box short of breaking and entering, and consequently has neither *possession nor control* of whatever property the customer may at any time have placed in the box, except such purely potential control as follows from the fact that the space, or box rented, is within the four walls of its vaults. The safe deposit company contracts with the box-renter to deny all access except that authorized by the lessee, that the contents of the boxes shall not be known to the company, and underlying the whole transaction is the element of privacy of possession, as well as absolute security of protection.

By Section 9 of the law in question, the entire basis of the business of safety deposit was invaded and overturned. In the guise of a measure to aid in the ascertainment of a tax, the Act, as applied by the authorities of the state to plaintiff in error, assumes on the part of, or imposes on, the safe deposit company, a *possession and control* of its customers'

property, the very absence of which distinguishes and has made possible the safe deposit business. Banks have the control and possession of securities or money deposited with them in the form of special deposits. Safe deposit companies, on the contrary, in their contracts and dealings, expressly exclude that possession and control; hence the safety deposit business, which has now become a recognized institution in the life of the age.

Besides making this radical change in the theory and character of the safe deposit business, by imposing a hitherto uncontemplated "possession and control" of customers' securities on the safety deposit company, the statute prohibits the company from delivering or transferring the contents of a box to the personal representatives of a deceased box renter, or to the survivors in the case of joint box renting, unless ten days' notice is given to the State Treasurer and Attorney General, and not then without retaining a sufficient portion or amount of the contents to pay any tax or interest which may thereafter be assessed, unless the State Treasurer and Attorney General consent in writing to such delivery or transfer. And it is further made lawful for the state officials "to examine said securities, deposits or assets at the time of such delivery or transfer."

The Act undertakes to compel the safety deposit company (under severe penalty for failing to comply), to deny, and physically prevent, access by the tenant to his property, or his removal of his property from his box. In other words, the law compels the safe deposit company to do the very

thing that it contracts with its lessees *not* to do; to assume a possession and control that cannot in the nature of the business exist, to deny to its customer the access it contracts to permit, and to give to others the very access to the rented space that it contracts not to give, and to compel the throwing open of the boxes in the case of death, to investigation and search by tax officials, who have an interest not in the property or estate of the deceased, but in a tax on the right of succession to the property. It assumes, too, that the safe deposit company is in the position to make a "delivery or transfer" of property, the manual possession of which it does not have, and cannot have, in the nature of its business, except by the authority of this law.

Further, it penalizes the company for failure to comply by making it liable for the tax and for a penalty of $1,000 as well. In the enforcement of the law, the officials claim that the safe deposit company has on the death of the customer a right of access to and control over the contents of his box, with power to deny to the persons legally entitled thereto, the right of control and removal thereof, with the power in itself to retain a portion of the contents sufficient to pay any inheritance tax thereafter to be assessed not on the property, but on the right of succession. In exercising this imposed duty of retaining sufficient of the contents of the box to cover the tax, the safe deposit company, it would seem, is required to determine at its peril what amount of the contents is thus sufficient.

Not only does this apply to the property status of a deceased single box renter, but to all the contents of

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a box rented by joint lessees, wherein the property of the living as well as of the dead is contained. And by a forced interpretation of the law asserted and enforced by the tax officials, this superimposed power is extended over the property of surviving partners of business co-partnerships where a partner dies and the box is held in the name of the firm.

Being advised that this law as interpreted is in conflict not only with certain provisions of the Illinois Constitution, but with Article I, Section 10, of the United States Constitution impairing its charter contract, and with Section 1 of Article XIV of the said Amendments, the National Safe Deposit Company filed its bill of complaint in the Circuit Court of Cook County, Illinois, which was twice amended.

The Bill of Complaint.

The material allegations of the amended bill are in substance as follows:

1. That complainant was incorporated in 1881 for the express purpose of providing a suitable building with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise and "to carry on the business of safety deposit and storage." (Trans., p. 28; Rec., 44.) That the complainant from that time to the present has built up a successful business consisting mainly of renting for hire safe deposit boxes or safes specially constructed for that purpose, in its vaults, for the safe keeping of money, securities of all kinds and valuables. (Trans., 28; Rec., 44.)

The lease, or contract, under which these boxes are rented, is then set out, a lease "of Safe No. ....

in the vaults of this company, for the term of," etc. The terms of liability are limited to the exercise of ordinary diligence to prevent the opening of the safe by any person other than the renter, or his duly authorized representative. (Trans., 29; Rec., 45.) The rules and regulations which are part of the contract are conditioned on the "contents not being known to the company" (Trans., 29; Rec., 45), and the first rule is that "*no one* except the renter or his deputy, to be designated in writing on the books of the company, or in case of death his legal representatives, to have access to the safe." There are further provisions for precaution against loss, and preservation of privacy, and prevention of intrusion into the vaults, a rule respecting changing of locks in case of lost keys, a reservation of right to terminate rentals on written notice, and regulations as to the hours for opening and closing the vaults. There is a provision for the company's opening the box on just one contingency—holding over under a lease without payment of rent, after ten days' mailing notice to the renter—analogous to a forfeiture clause in an ordinary lease. (Trans., 29; Rec., 45.)

2. The bill then recites that of the 13,291 safes in the company's vaults, 9,702 are under the contract of rental aforesaid, and that approximately 4,104 of said boxes are rented and held jointly by more than one individual, any one of whom has the right and privilege of keeping property in their jointly rented box and of having access thereto exclusively with his joint renters. That there are in addition approximately 316 boxes rented and held by co-

partnerships. That the demand for joint rentings is constantly increasing and constitutes a considerable portion of complainant's business, and that as a matter of law, it is advised that it owes to all of the joint renters, as well as individual customers, the duty of safekeeping and undisturbed possession. (Trans., 29; Rec., 45.)

3. Then is described the ordinary course of business in respect to opening boxes—that they can only be opened by two keys, one of which is held by the renter and the other by the company, and that it requires the joint action of the customer and the company to secure access to the contents of the boxes, the company retaining no means of access to the contents by itself alone, and possessing no means of knowledge or information as to the ownership of the securities deposited in the rented boxes beyond the fact that a certain box is rented as aforesaid. (Trans., 30; Rec., 46.) Only in certain emergencies specified in the contract of rental and out of the ordinary course of business, does the company have anything to do with the opening of boxes except by co-operation with the renter. These are, in the case of lost keys reported to the company, when in the presence of the renter, which is insisted upon, the lock on the box is drilled out and replaced with new lock and keys; and, in the case of abandonment of a box by a renter, evidenced by his failure to renew the lease, the company sometimes exercises the right, on notice, as provided in the lease, to drill out the lock and withdraw and hold the contents of the box at the disposition of the renter. (Trans., 30; Rec., 47.) Sometimes, too, on the decease of a

renter, without administration papers, when persons identified as next of kin represent that there is a will of the deceased renter in the box, the company allows such next of kin, if they have the key, to open the box in the presence of the company's agent, and, without removing any of the contents, look for the will, which if found is either deposited in the Probate Court, or delivered to a Probate Court representative by the company; and in some instances when the next of kin represent that the key could not be found, the lock has been drilled and changed at their request and in their presence. But as a matter of law, the complainant is advised it does not have the contents of said boxes in its possession or control. It is only as the same is implied as a matter of law from the fact that such boxes are located on its premises, and that the course of business is as above set forth. (Trans., 31; Rec., 48.)

4. The bill then sets out Section 9 of the Inheritance Tax Law which went into effect July 1, 1909, and has already been quoted literally in this statement. (*Supra*, p. 3.)

5. Under this law, it is alleged, the Attorney General and State Treasurer, and the Inheritance Tax Attorney (an officer intrusted under Section 16 of said Inheritance Tax Law with the ascertainment and collection of inheritance taxes and further being specifically authorized by the Attorney General and State Treasurer to enforce said Section 9) claim the right to compel complainant to deny to personal representatives of a deceased renter and to the survivor of joint and business partnership renters, control over or liberty to remove the con-

tents of the boxes without ten days' notice to and the consent of said officials, or unless a sufficient portion of said contents is retained by the company to pay any tax and interest that may thereafter be assessed on account of the taking possession of the contents by the personal representatives or by surviving joint or partnership renters, as the case may be. (Trans., 32; Rec., 50.) That the officials in effect assert and insist that complainant has, upon the death of a box renter, a right of access to and control over the contents of any such box with power, and that it is by said statute required under penalty, to deny to the persons entitled thereto the right of control and removal thereof, and with the power in itself to retain a portion of the contents sufficient to pay any tax thereafter to be assessed upon the property in the box. That the officials claim the right to examine the contents of any such box at the time of the removal of the contents by the person legally entitled thereto. All of these claims are in conflict not only with the obligations imposed upon complainant by its contracts aforesaid, but with the constitutional rights of the box renters and their personal representatives. The officials not only claim that complainant has this right of interference with the contents of its customers' boxes, but insist that complainant shall in fact interfere in the manner stated above, and deny control of their property to survivors and allow the said officials to make examinations of the contents and threaten the company with the penalties described in said act for noncompliance with its provisions. (Trans., 33; Rec., 52.)

6. All these claims, the bill alleges, interfere with and seriously threaten the property rights of complainant in the conduct of its safe deposit business, and are unconstitutional:

(1) Because they impair the obligation of contracts, and because

(2) Are in conflict with Federal and state constitutional provisions as to security in papers and effects against unreasonable searches and seizures, and because

(3) They conflict with the state and Federal constitutional provisions against depriving persons of liberty or property without due process of law, and deny equal protection of the laws.

7. The bill further alleges that even if the law is constitutional, which complainant denies, it does not, when rightly construed, authorize these officials or the complainant to deny the right of immediate control of and removal of the contents of partnership boxes to the surviving partners, nor would it authorize complainant so to interfere on its own motion. The word "joint" wherever it is used in Section 9, means joint renters or owners, who are not partners, and them only. (Trans., 34; Rec., 54.)

8. Then follow the grounds for equitable jurisdiction, which were not controverted by defendants and were sustained by the Illinois courts.

The bill concludes by asking that Section 9 be declared unconstitutional as to safe deposit companies, or if held valid, that it may be construed not to require complainant or the said state officials to interfere directly or indirectly with the property of the survivors of joint or partnership renters of

boxes, and that the said officials be restrained by injunction from further enforcing against complainant the said provisions of said Section 9, or, if it be declared constitutional, from enforcing against complainant and its customers the erroneous constructions aforesaid. (Trans., 36; Rec., 59.)

To this amended bill a general demurrer was interposed by the defendants and sustained by the Circuit Court, and the bill was thereon dismissed. An appeal was then taken to the Supreme Court of Illinois, which, on June 20, 1911, in an opinion, which is attached to the record (Trans., 43-59; Rec., 70) affirmed the judgment of the court below, holding that Section 9 of the Act in question was not in conflict with the state or the Federal Constitutions. The record of this judgment by writ of error was brought to this court from the Supreme Court of Illinois, on the ground that said Section 9 was in itself and as construed by the state court repugnant to the Constitution of the United States.

SPECIFICATION OF ERRORS RELIED UPON.

It is our purpose to rely on the 3rd, 5th, 6th, 7th, 8th, and 9th Assignments of Error (Trans., 70), to-wit:

THIRD ASSIGNMENT OF ERROR.

The Supreme Court of Illinois erred in holding that Section 9 of an Act passed by the General Assembly of the State of Illinois, and in effect July 1, 1909, entitled, "An Act to tax Gifts, Legacies, Inheritances, Transfers, Ap-

pointments and Interests in certain cases and to provide for the collection of the same and repealing certain acts therein named," in so far as the same applies to plaintiff in error, is constitutional and not void as being in conflict with Article I, Section 10 of the Constitution of the United States.

Under this will be urged that the charter contract and contract rights and obligations of the plaintiff in error to continue in the business of safety deposit are impaired.

FIFTH ASSIGNMENT OF ERROR.

That the Supreme Court of Illinois erred in holding that said Section 9 was not in conflict with Section 1, Article XIV of the Amendments to the Constitution of the United States.

Under this we shall urge that Section 9 in question deprives plaintiff in error, without due process of law, of liberty to engage in a lawful business; that it deprives it of the right of contract as a property right; and that it deprives it of the equal protection of the laws, by imposing special burdens.

SIXTH ASSIGNMENT OF ERROR.

That the Supreme Court of Illinois erred in not holding that Section 9, so far as it applies to plaintiff in error and its customers, is unconstitutional as being in conflict with the rights and immunities provided for in Article I, Section 10 of the United States Constitution, and Section 1 of Article XIV of the Amendments.

Under this we shall urge that Section 9, in denying to the customers of plaintiff in error the rights and immunities vouchsafed by the Fourteenth

Amendment, deprives the plaintiff in error of liberty and property and the equal protection of the law.

SEVENTH AND EIGHTH ASSIGNMENTS OF ERROR.

That the Supreme Court of Illinois erred in holding that the interpretation and extension of Section 9 to include the surviving partners of commercial co-partnerships holding safe deposit boxes under lease, was not in conflict with Section 1 of Article XIV of the Amendments to the Constitution of the United States, or either of them.

Under these assignments, it is intended to urge that the reading into the act by the Inheritance Tax Officials and by the State Court of commercial co-partnerships holding safe deposit boxes under lease renders the act when so construed unconstitutional, and by compelling plaintiff in error to deprive customers of liberty and property without due process of law, and of the equal protection of the law, it operates to destroy the business of safety deposit.

NINTH ASSIGNMENT OF ERROR.

The Supreme Court of Illinois erred in not reversing the judgment and decree of the Circuit Court of Cook County with directions to said Circuit Court to issue the temporary injunction and enter the decree as prayed for in the bill of complaint.

BRIEF OF THE ARGUMENT.

I.

THE NATURE OF THE SAFETY DEPOSIT BUSINESS AND DEALINGS OF THE PLAINTIFF IN ERROR.

The fundamental proposition of general law upon which the State Court sustains the constitutionality of Section 9 is that the company has such possession and control because the relation of bailor and bailee exists between the safety deposit company and its customers, rather than that of lessor and lessee of a diminutive room called a box. For the purposes of the constitutional question raised here, this court must determine what the true relation is; and we maintain that it clearly is not that of bailment.

Tullock v. *Mulvane*, 184 U. S., 513.

The business of safety deposit is peculiar and new to the law. It consists of renting, by yearly leases, enclosed spaces, called boxes, in specially constructed and carefully guarded vaults. The boxes can be opened only by two keys or combinations, one held by and known only to the renter, the other held by and known only to the company, and to secure access to the contents of the box, requires the joint act of the company and the customer. Neither alone retains a means of access to the box, and in particular the company, from the nature of the business, possesses no means of knowledge nor information as to the securities or the ownership thereof that the

renter may place in his box. Its contractual obligation is to preserve its own ignorance and preserve and not violate its customer's right to secrecy as to the contents of the boxes. The obvious purpose of making the key held by the company necessary to access to the box is to protect the exclusive control and secrecy of the customer, *e. g.*, against his loss of his key to a thief or unauthorized hand.

Only in case of box abandonment or loss of keys, does the company assume a right of forcible entry, provided for in its leases; and on representation by identified next of kin that the will of a deceased renter is in his box, a departure from its rule denying access to all except the renter is sometimes allowed under guarded and limited conditions. Under no other circumstances can the Company come in contact with the rented space.

Therefore, the elements of possession and control in the company of the contents of its customers' boxes are absolutely wanting. (Trans., pp. 29-31; Rec., pp. 45-48.)

The duty on the part of the Safe Deposit Company of safeguarding the rented space on the one hand, and the right of the lessee to undisturbed possession on the other, constitute the essence of the business. Hence, manual possession and control in the safe deposit company of the property contained in the rented space do not exist, but are alone contemplated and imposed by the Section of the Act in question, as applied and enforced by the authorities of the State.

The essential elements of bailment are wholly

wanting in the transaction, *i. e.*, receipt, possession, delivery. (Argument, pp. 32-43.)

Union Trust Co. v. *Wilson*, 198 U. S., 530, 537.

Moore v. *Mansfield*, 182 Mass., 302.

2 Ency. Sup. Ct. Reports, 783.

Story on Bailments (9th Ed.), Sec. 2.

Jones on Bailments, 1.

Schouler's Bailments, Sec. 2.

Security Warehousing Co. v. *Hand*, 206 U. S., 415, 421.

II.

It is argumentatively said in the opinion of the State Court that as the state has, upon and from the death of the decedent, a "vested," *i. e.*, an accrued right, in the tax, which is a tax on the right of succession and not on the property of a decedent, it therefore has a vested financial right in the estate or property by which the tax is measured. (Trans., p. 49; Rec., p. 81.) This is an unfounded process of reasoning which only serves to obscure the issue.

Kochersperger v. *Drake*, 167 Ill., 122.

Estate of Merrifield v. *The People*, 212 Ill., 400.

Knowlton v. *Moore*, 178 U. S., 41, 47.

Magoun v. *Illinois Trust & Savings Bank*, 170 U. S., 283.

Home Insurance Co. v. *New York*, 134 U. S., 594.

Flint v. *Stone Tracy Co.*, 220 U. S., 107, 162.

Where an impairment of contract or a deprivation of property rights without due process are relied upon, this court will determine for itself the existence and nature of the contract or the property right. (Argument, pp. 49, 50.)

Hoadley v. *San Francisco*, 124 U. S., 645.
Scott v. *McNeal*, 154 U. S., 34, 45.

III.

THE APPLICATION OF THE FOURTEENTH AMENDMENT.

The statute in question deprives plaintiff in error of the right to pursue a lawful business, free from legislative burdens which are not imposed through such police regulations as are consistent with constitutional guaranties. No state may deprive any person of liberty or property without due process of law. The right to contract is property in this sense.

A legislature may not impose upon one, who is not a trustee or agent of the owner in possession and control of the property of the *cestui* or principal, the obligations of a tax-collecting public officer, or of a trustee, without his consent. It may not cast upon one the duty of seizing and retaining from another's property an undefined amount thereof sufficient in value to pay an undefined tax, to be determined by such one at his peril or risk. It cannot, by its enactment, change the contract relation of plaintiff in error to its lessees, or create in or impose upon it a possession and control of its lessee's property which its contract relation does not contemplate but forbids.

A corporation is a "person" protected by the provision against deprivation of property. (Argument, pp. 50, 51.)

Cargill Co. v. *Minnesota*, 180 U. S., 452.
Carroll v. *Greenwich*, 199 U. S., 401, 409.
Gulf, etc., Ry. v. *Ellis*, 165 U. S., 154.
Hale v. *Henkel*, 201 U. S., 43.
National Council U. A. M. v. *State Council*, 203 U. S., 162.

1. Section 9 of the Act imposes possession, control and power of transfer. It incorrectly assumes that a deposit company has in its possession or under its control the contents of its rented boxes and can deliver or transfer the same. (Argument, pp. 50, 51.)

(a) "Possession" means exercise of power over a corporate thing, at pleasure, to the exclusion of all others. (Argument, pp. 50-53.)

Union Trust Co. v. *Wilson*, 198 U. S., 530, 537.
Rice v. *Frayser*, 24 Fed. Rep., 460, 463.
Gilkeson-Sloss Commission Co. v. *London*, 53 Ark., 403.
Smith v. *Race*, 76 Ill., 491.

(b) "Control" has no legal or technical meaning apart from its popular sense, and is synonymous with "manage." (Argument, pp. 52, 53.)

Ure v. *Ure*, 185 Ill., 216, 218.

2. Not only possession and control are imposed by the terms of Section 9, but the power of delivery and transfer of the contents of the leased boxes are

required of the company. Unless the elements of possession and control and delivery of property exist in the company and the plaintiff in error is in fact a full bailee in the ordinary sense, the enforcement of the act against plaintiff in error involves a serious deprivation of liberty and property.

If Section 9 is a regulation of the devolution of property on death, as the court below reasons, the regulation applies to the one entitled to the possession, *i. e.*, the personal representative—and not to the safe deposit company that has neither the possession nor the right to possession of the property sought to be regulated.

Taking possession and control and the right to possession and control from the box lessee's personal representative and bestowing it on the safe deposit lessor against its consent, at the same time superimposing a power of delivery and transfer and the power to retain and so the power to seize in order to retain, in direct conflict with the basic principle of the safety deposit business, is a legislative interference amounting to a deprivation without process of law, of the latter's right to carry on its lawful business—a deprivation, that is, of its liberty and property rights of contract. (Argument, pp. 53-55.)

State v. *Peel Splint Co.*, 36 W. Va., 856.
State v. *Goodwill*, 33 W. Va., 179.
Allgeyer v. *State of Louisiana*, 165 U. S., 589.
Gulf, etc., Ry. v. *Ellis*, 165 U. S., 150, 154.
Carroll v. *Greenwich Ins. Co.*, 199 U. S., 409.
Braceville Coal Co. v. *People*, 147 Ill., 69.

A lawful vocation is not to be arbitrarily and vexatiously burdened. (Argument, p. 55.)

People v. *Steele*, 231 Ill., 351.

3. There is no process of law. The mere passage of the act making interference with plaintiff in error's business possible is not due process of law. (Argument, p. 55.)

Davidson v. *New Orleans*, 96 U. S., 97, 102.
Hurtado v. *California*, 110 U. S., 516, 535.
Smyth v. *Ames*, 169 U. S., 527.

4. The privilege of contracting is both a liberty and a property right. (Argument, pp. 55-59.)

Matthews v. *People*, 202 Ill., 401.
Williams v. *Fears*, 179 U. S., 270, 274.
Bailey v. *People*, 190 Ill., 28, 33.

5. To force an office or duty on one against his will offends the right of contract. (Argument, pp. 59-61.)

6. The law makes the safe deposit company in effect a trustee of its customers' property.

To impose upon one a trusteeship without his consent, deprives him of his property right of contract. (Argument, pp. 61, 63.)

Bethune v. *Dougherty*, 21 Ga., 257.
Underhill on Trusts (Am. Ed.), 190.
Perry on Trusts, Sec. 259.
28 Am. & Eng. Ency. of Law, 971.
39 Cyc., 77, 252.
Taylor v. *Holmes*, 14 Fed. Rep., 498, 509.
Beckett, Trusts & Trustees, Sec. 548.

7. The act requires the company, at its peril, to retain an amount of the contents of the box to cover the tax, and to determine how much must be so retained.

8. Safe deposit companies are not to be denied the equal protection of the laws.

A law that places safe deposit companies arbitrarily in a general class of bailees, to which they do not belong, and submits them to the obligations and duties of general bailees, when such obligations and duties are entirely inconsistent with their established business and dealings and contract relations, makes them the victims of unjust discrimination.

As lessors of rented space, there is again unjust discrimination and arbitrary action of government, in imposing burdens on them not placed on other lessors of space.

There is in all this a denial of the equal protection of the laws to safe deposit companies. There is a forced classification of safe deposit companies, who do not have possession or control, with those having in possession and under control the property of another, and the result of the classification and the duties imposed thereby are subversive of the business of safety deposit. They are *not* so subversive of the business of banks, trust companies, etc., which actually have property in possession and control. Therefore, there is denial of the protection of equal laws. (Argument, pp. 63-69.)

Missouri v. *Lewis*, 101 U. S., 22, 31.
Barbier v. *Connolly*, 113 U. S., 27, 31.
Hayes v. *Missouri*, 120 U. S., 68, 71.
Duncan v. *Missouri*, 152 U. S., 377.
Gulf Ry. v. *Ellis*, 165 U. S., 150, 165.

IV.

The legislative grant to carry on the business of safety deposit is impaired by the provisions of Section 9.

That contract consists of the right to continue to lease carefully guarded space in a manner utterly to exclude the relation of bailment. The imposition of the relation of bailor and bailee by Section 9 destroys the business and impairs plaintiff in error's contract with the state.

It is not a regulation of the chartered right.

> *Venner* v. *Chicago City Ry.*, 246 Ill., 170, 176.

The existence, scope and effect of the contract claimed to be impaired, is open for determination by this court, as part of the Federal question involved.

> *Mobile & Ohio R. R.* v. *Tennessee*, 153 U. S., 486, 494.
>
> *Douglas* v. *Kentucky*, 168 U. S., 488, 502.
>
> *Louisville Gas Co.* v. *Citizens Gas Co.*, 115 U. S., 683, 697.
>
> *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S., 143.
>
> *Terre Haute, etc., R. R.* v. *Indiana*, 194 U. S., 579, 589.
>
> *Powers* v. *Detroit, etc., R. R.*, 201 U. S., 543, 556.

V.

The act complained of deprives safe deposit companies of their property right to pursue a lawful

calling by the unconstitutional invasion of their customers' rights.

This is not championing the wrongs of an outsider. The company is not a stranger to the grievance of its customers. (Argument, pp. 72, 73.)

Lampasas v. *Bell*, 180 U. S., 276.

The company is directly and certainly affected by the unconstitutional operation of the law. The outrage of its customers' rights destroys its business. The ways in which the act affects the company and its customers are set out at length in the bill as seriously threatening the property rights of the company. Both considerations operate to deprive the company of rights protected by the Federal Constitution. (Argument, pp. 74, 75.)

Chadwick v. *Kelley*, 187 U. S., 540, 547.
Hooker v. *Burr*, 194 U. S., 419.
Standard Stock Food Co. v. *Wright*, 225 U. S., 540, 550.

(1) Much of the business of safety deposit is with joint box renters. A surviving joint box renter, having a right of exclusive access to the joint box, by being denied access to his own property, is deprived of liberty and property without due process and is denied the equal protection of the laws, by an act which interferes with that access under guise of an inheritance tax investigation directed at another's property, and the safe deposit company is made by the act an instrument in effecting the wrong. It may be very serious in others. (Argument, pp. 75-78.)

(2) Interference with free access to the property of surviving joint box renters, and examination thereof by ministerial officials, or by a safe deposit company, without notice or judicial hearing, particularly where the object of the inquiry in no wise appertains to that particular property, is deprivation of property without due process of law. It matters not that the inconvenience might be trifling in some instances. (Argument, pp. 72-78.)

City v. *Wells*, 236 Ill., 129, 132.

(3) What has already been urged as to deprivation of liberty, property and equal protection of the laws, applies with equal force to surviving joint box renters, and so impresses upon the business of plaintiff in error an additional burden. (Argument, pp. 80, 81.)

(4) The superimposed construction of the act enforced by the tax officials and adopted by the state court, that the law extends, beyond its terms, to surviving business partners of business co-partnerships holding boxes in the partnership name, is unconstitutional. (Argument, pp. 81-83.)

Where one is clothed with the State's powers, his acts are that of the State. (Argument, pp. .....)

Raymond v. *Chicago Traction Co.*, 207 U. S., 20, 35.

Chicago B. etc., Rd. v. *Chicago*, 166 U. S., 233.

The repository of state power, by abuse of authority, becomes subject to the Fourteenth Amendment. (Argument, p. 82.)

Home Telephone & Telegraph Co. v. *Los Angeles*, 227 U. S., 278.

A. A commercial partnership is a legal entity. (Argument, p. 83.)

30 Cyc., 423.
Menagh v. *Whitwell*, 52 N. Y., 146.
Drucker v. *Wellhouse*, 82 Ga., 129.
Richards v. *Leveille*, 44 Neb., 43.
Curtis v. *Hollinghead*, 14 N. J. L., 410.
In re Meyer, 98 Fed. Rep., 976.
In re Sanderlin, 109 Fed. Rep., 857.

B. The effect of this entity is that while death dissolves the partnership as to the future, it still continues as an entity for the purpose of settling its old affairs, and the right of the surviving partner to the exclusive control of the partnership property is well settled. (Argument, pp. 84, 85.)

Bank of Montreal v. *Page*, 98 Ill., 109, 120.
Maynard v. *Richards*, 166 Ill., 466, 477.
Menagh v. *Whitwell*, 52 N. Y., 146.
1 Lindley, Partnerships, 4th Ed., 207.
Gannett v. *Cunningham*, 34 Me., 56, 62.
Davis v. *Megroz*, 55 N. J. L., 427, 431.
Brown v. *Higginbotham*, 5 Leigh. (Va.), 583, 588.

C. Until the payment of firm liabilities, the right of possession and control of the surviving partner is exclusive, even of the administrator of the deceased. (Argument, pp. 85-87.)

Miller v. *Jones*, 39 Ill., 54, 60.
Commercial Bank v. *Proctor*, 98 Ill., 558.
30 Cyc., 659.
Chapter 3, Hurd's Revised Statutes, Illinois, 1912, Secs. 86, 87, 88.

D. The state Supreme Court manifests in its opinion no intention of overturning the established law of Illinois in this particular, yet Section 9 of the Act in question cannot be made to apply to a co-partnership box lease, and to co-partnership assets, except by overthrowing that established law. (Argument, pp. 87, 88.)

See opinion of Illinois Supreme Court, Trans., 53.

E. If the inclusion of boxes held by business co-partnerships is a construction of Section 9 by the state court, the question of whether or not as so construed it is unconstitutional, is open to determination by this court. (Argument, pp. 88, 89.)

VI.

That the purpose of the act is to effectuate the ascertainment and collection of a tax, does not justify its summary disregard of constitutional rights. (Argument, p. 89.)

Extreme departures from law and justice are not permitted even in the case of tax collection. (Argument, p. 90.)

Turpin v. *Lemon*, 187 U. S., 51, 58, 60.

C. B. & Q. Ry. v. *City*, 166 U. S., 226, 236.

Henderson Bridge Co. v. *Henderson*, 173 U. S., 615.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 563.

The citizen, be he individual or corporation, must be protected from the arbitrary action of government. (Argument, p. 91.)

Twining v. *New Jersey*, 211 U. S., 101.

ARGUMENT.

I.

THE NATURE OF THE SAFE DEPOSIT BUSINESS.

The reasoning of the Supreme Court of Illinois by which it sustained the Constitutionality of Section 9 in question as applied to the safe deposit business of the plaintiff in error, involves the consideration of some questions of general law, as to the nature, expressed in legal terms, of such safe deposit business, and of the relations between the company and its lessees; and as to the propriety of the classification of safe deposit companies with trust companies, corporations, banks or persons "having in possession or under control securities, deposits or other assets belonging to or standing in the name of a decedent * * * or belonging to or standing in the joint names of such a decedent and one or more persons." The view of that court was that the lessee of plaintiff in error was a bailor and the safe deposit company bailee, and the relation between them with respect to the contents of a leased box or space is that of bailment. Upon this question, the ruling of the Supreme Court of Illinois is not binding upon this court. Indeed, if its decision were conclusive, by its decision of such question of general law the decision of this court upon the constitutional question might be controlled. In other words, upon the same state of facts or case, the statute of the state might be constitutional or

unconstitutional, depending upon the view of the Supreme Court of the State upon a question of general law, if that view were conclusive. For the purposes of the constitutional question raised here, this court determines for itself, from the allegations of the bill of complaint, admitted by the demurrer, what the nature of the business and the relations of the safe deposit company with its lessee or customers are.

In *Tullock* v. *Mulvane*, 184 U. S., 513, Mr. Justice White said:

> "Now it is at once conceded that the decision by a State Court of a question of local or of general law involving no Federal element does not as a matter of course present a Federal question. But where on the contrary a Federal element is specially averred and essentially involved, the duty of this court to apply to such Federal question its own conceptions of the general law we think is incontrovertible."

In the opinion of the Illinois Supreme Court, the conclusion on this preliminary point was that by leasing a box and placing therein his securities in the manner set out in the bill, the lessee of the safe deposit company's box establishes the relation of bailee and bailor, with the result that the safe deposit company as bailee has not only the possession, but the control and the power of transfer of the contents of the box. We maintain that this view does not give full weight to the particular allegations of the bill in this case with reference to the nature of the safe deposit business of plaintiff in error.

Turning to the allegations of the bill in this regard, we call attention to the fact that for nearly

thirty years, under charter from the State of Illinois, the plaintiff in error was empowered to enter into the *business of safety deposit and storage.* (Trans., 38.) The bulk of its business was safety deposit—an essentially different thing from *storage*, which is obviously the receipt and possession of an article, as such, for safe-keeping and its return, and results at once in the unquestioned relation of bailor and bailee. But the business of *safety deposit* is fundamentally different. It consists, to quote from the bill,

> "of renting for hire safe deposit boxes or safes specially constructed for that purpose in its vaults, for the safe-keeping of money, securities of all kinds and valuables. That your orator enters into a contract with each safe deposit box renter, upon the payment of the stipulated price for such service, in words and figures as follows:
>
> NATIONAL SAFE DEPOSIT COMPANY.
>
> Rent Payable in Advance. Capital $2,500,000.
> Hours, 9 to 5.
> Close at 1
> Saturday.
>
> First National Bank Building, Chicago.
> Telephones, Central 942.
>
> Number
> .....
>
> Received of .....Dollars, for rent of Safe No. ..... in the vaults of this Company, for the term of one year from the ..... day of ....., 191.....
> The liability of the National Safe Deposit Company is limited to the exercise of ordinary diligence to prevent the opening of said Safe by any person other than the renter or his duly authorized representative and is assumed upon the express agreement by the renter that an

unauthorized opening or other breach of duty shall not be presumed from the mere loss or disappearance of any of the contents of said safe.

Accepted, subject to the Rules and Regulations prescribed by the Company, which are printed on the back of this receipt.

DANIEL PECKHAM, *Secretary and Manager.*

By .....

RULES AND REGULATIONS

by which each renter will be governed.

Whenever a party rents a safe and deposits therein at pleasure, contents not being known to the Company, its liability is limited:

I. No one except the renter or his deputy, to be designated in writing on the books of the Company, or in case of death, his legal representatives, to have access to the safe.

II. Renters will not examine their boxes or papers in the vaults, but will use desks provided for that purpose.

III. No renter will be permitted to enter the vaults except in the presence of the vault-keeper.

IV. In case of loss of keys or combination, the locks will be changed at the expense of the renter.

V. This company reserves the right to terminate a rental at any time, on a written notice to the renter or deputy, and the renter will thereupon withdraw his papers and surrender the keys.

VI. In case the lease of a safe is not renewed, and the rent for the term duly paid in advance, the company is authorized after giving ten days' notice of its intention so to do, by mailing such notice to the renter at the address given in the books of the company, to open said safe at the expense of the renter.

VII. The manager of said vaults shall fix the hours for opening and closing the same, and said vaults may be wholly closed upon any na-

> tional, state or city holiday, or upon any other days when, on account of mobs, unusual crowds, closing of the Chicago Clearing House Association, or for any other reason, said manager shall deem such closing prudent or proper." (Trans., 28.)

It thus becomes apparent that the essential transaction in the business of safety deposit is the renting of space for hire, with particular reference to the careful safeguarding of that space from intrusion—*not* in the receipt of articles for storage, the essential element of which is their keeping and return to the owner when demanded, in the same condition in which they were received. There is involved in the contract of storage no right in the bailor to access to the property while in the possession of the bailee. There is conspicuously absent, in the case of safety deposit, the delivery of any articles or securities from the customer to the company, the custody of the articles as such by the company, and the return of the articles as such from the company to the customer; and the customer has the exclusive right of access. In other words, the safety deposit company is in the business of renting particularly well guarded space—and not in the business of *holding or transfer of possession* of articles, as in the case of storage.

Now, as to the manner in which the business is conducted, the bill alleges (Trans., 30):

> "That in the ordinary course of said business said safe deposit boxes and safes so rented can be opened only by two keys or two combinations, one of which keys or combinations is held by or known only to the renter to whom

said box is rented, and the other of which keys or combinations is held by or known only to your said orator, or to its servants, agents, or employes and that it requires the joint act of such customer and said complainant to secure access to the contents of a safe deposit box or boxes or safe or safes so rented or leased as aforesaid, and thus while the co-operation of your orator through its servants or agents is needed in the opening of the said boxes or safes and securing access to their contents, your orator retains no means of access to them by itself or by its servants or agents alone, nor does your orator possess any knowledge or information or means of knowledge or information as to the ownership of the securities, deposits or other assets which are deposited in said boxes and safes so rented other than the fact that said securities, deposits or other assets are contained in a certain particular box or safe rented as aforesaid."

Safekeeping of the space rented by the company and undisturbed possession of his rented space by the customer, are of the essence of the business. The duty on the one hand and the right on the other, constitute the legal nature and effect of the business. The leases are made subject to the proviso that the contents are not to be known to the company. (Trans., 29.) Without it there could be no safety deposit business. There might be bailment and storage—but not the business of safety deposit, which is the particular and peculiar object of Section 9 of which we complain.

It is true that a portion of the system of safeguarding that is adopted by plaintiff in error requires that there be two lock combinations on each box, one of which is held by and known only to the

renter, and the other held by and known only to the company, and a joint act of the company and customer is necessary to open a safe. The purpose of this is to increase the safety and insure the inviolability of the contents. The obvious purpose of the company's key is to protect the customer from an unauthorized access by some person who had improperly gotten possession of the owner's key or to make sure that only the owner or some one coming with his key and proper authority from him, should have access to the box. It is equally obvious that while the customer cannot have access to and open his box alone, neither can the company. It has no means of access to the box whatever, and possesses no knowledge or information or means of knowledge or information as to the contents of the boxes. It is manifest that any other system would utterly disrupt the protection of the right of privacy and the security that the nature of the business contemplates. Any situation that includes any kind of espionage, interference with, or control over what a box renter has in his box, by the safe deposit company, or by any person whatsoever, without the renter's sanction, would be absolutely intolerable and fatal to the business. It would transform the business into one of storage. True, in certain emergencies, as in the case of abandonment after reasonable notice, the right to a forcible entry by the company is reserved. But that has nothing to do with the question of power to disturb contents under normal conditions, and can occur only after a forfeiture of rights in some manner and on notice.

The misconception of the Illinois Supreme Court

is made to appear by its likening the situation of the safety deposit company lessor to the bailee of a trunk. (Trans., 47; Rec., 77.) The difference between them plainly marks the line which distinguishes a lessor from a bailee, viz.: The safety deposit company lessor leases to its customer a defined space—a particular diminutive room, which is called in the lease a safe, and bears a number and is fitted with a door with lock thereon; and to this space and its contents the lessee, but not the lessor, is entitled to access. The lessee places his property therein and locks the door. There is no delivery of the room, the box, or the contents, or anything at all by the lessee to the lessor. The lessor merely guards from the outside thereof the diminutive room from burglars or intruders. In the other case, the owner of the trunk delivers the trunk, which is his property, to the bailee, who receives it into his possession and holds it in his possession for hire. The bailor has no right of access to the contents of the trunk without destroying the bailment. Therefore, the essential elements of a bailment exist. In the case at bar they do not.

The true relation of plaintiff in error to its safe deposit customer is more like that of a lessor of a room in an office building or house to his lessee, where he provides some safeguarding from the outside but has no possession or control of or access to the room itself or its contents. The "possession and control" required by Section 9 and necessary to the carrying out of its provisions, is an actual, *manual* possession and control, to the exclusion of everyone, of the property in the box.

Yet the possession and control that a safe deposit company actually lawfully has under its contract of renting, over the property of its lessees, is a possession and control which is limited to the outside safeguarding the receptacle which is rented, and, as to the contents of that receptacle, the contract excludes the elements essential to a bailment, *i. e.*, manual and actual exclusive possession and power of transfer, such as is essential to the delivery of property. It is not a possession that involves the handling and receipt of valuables and accountability for their loss, except in the one particular of negligence in the outside safeguarding the receptacle in which they are kept. It embraces no power of distribution or of transferring the contents. It is as widely separated as the poles from the actual possession and control required by the act. The plaintiff in error could get that possession and control only by physical force.

Union Trust Co. v. *Wilson*, 198 U. S., 530, 537.

Moore v. *Mansfield*, 182 Mass., 302.

In the *Wilson* case, the Security Warehousing Company was lessee of a portion of a basement and received leather for storage. It had a key to the landlord's front door and access to the part let to it, at all hours. No one else could get such access without breaking in. Mr. Justice Holmes said there was no doubt on the facts stated

> "that the company had possession of the goods. It had them under lock and key in a place to which it had a legal title and right of access by lease. Even if it had not had a right of access

to the place, it would have had possession of the contents of the room, according to the analogy of the settled law that a carrier who breaks bulk and takes the goods is guilty of larceny. Y. B., 13 Ed. IV, 9, pl. 5. The act is a trespass as agreed in Keilway, 160 pl. 2. *Ward* v. *Turner*, 1 Dick, 170, 172; S. C., 2 Ves. Sr., 431, 443; *Moore* v. *Mansfield*, 182 Mass., 302, 303. So, again, if the goods had been in a place under the exclusive control of the company, even without the company's knowledge, they would have been in the company's possession. *Elwes* v. *Brigg Gas Co.*, 33 Ch. D., 562, 568; *Reg.* v. *Rowe*, Bell C. C., 93; see *Barker* v. *Bates*, 13 Pick., 255, 257, 261; *Northern Pacific Railroad* v. *Lewis*, 162 U. S., 366, 378, 379, 382. When there is conscious control, the intent to exclude and the exclusion of others, with access to the place of custody as of right, there are all the elements of possession in the fullest sense. *Gough* v. *Everard*, 2 H. & C., 1, 8; *Ancona* v. *Rogers*, 1 Ex. Div., 285."

The analogy of this lessee company to the lessees of the boxes of a safe deposit company is perfect with reference to possession.

While there are a very few scattered cases to be found where it has been said on superficial consideration that the relation of safe deposit companies and their box renters was that of bailee and bailor, the actual point ruled was that the company was liable for want of ordinary care in safeguarding the box from unlawful breaking and entry.

We respectfully insist that the question as to possession and control of the box and its contents is to be determined by the allegations of the bill of complaint, and that upon consideration of the facts so alleged, which are admitted by the demurrer to the

bill, that relation does not properly exist, but rather the relation of lessor and lessee of rented space. This view was taken by the Supreme Court of New York in the *Russell Sage* case last March, involving a similar provision in the New York law, and this was recently affirmed on appeal by the Appellate Division (not yet reported).

The cases of *Mayer* v. *Brensinger*, 180 Ill., 110, and other cases cited in the majority opinion of the Supreme Court of Illinois, *Lockwood* v. *Manhattan Storage & Warehouse Co.*, 50 N. Y. Supp., 974; *Cussen* v. *South Cal. Savings Bank*, 133 Cal., 534; *Roberts* v. *Safe Dep. Co.*, 123 N. Y., 57, and *Safe Deposit Co.* v. *Pollock*, 85 Pa. St., 391, involved the question of the liability of the safety deposit company for negligence in not exercising sufficient care in guarding or protecting the plaintiff's leased space or room from unlawful access of other persons, as its contract required. It was merely a question as to the requirement of care; and the result on that question in those cases must have been the same if the safe deposit companies had not been regarded as bailees. A sleeping car company is liable for want of ordinary and reasonable care to guard and protect the hand baggage of passengers occupying its beds or rooms; but it is not a bailee of such baggage. Its obligation arises from the nature of its contract.

To deduce from these negligence cases, which turn on the question of the degree of care, and do not carefully analyze the relation of the company to the lessee, the conclusion that the safety deposit business involves a bailment, is illogical, where the

nature of the business, properly considered, is at complete variance with such deduction. The cases of *Gregg* v. *Hilson*, 8 Phila., 91, and *Bottom* v. *Clarke*, 7 Cush., 487, may be cited as declaring the correct analysis of the relation.

The elements of delivery to and acceptance and possession and power of redelivery by the bailee of personal property, are absolutely essential to a bailment.

> "A bailment *is a delivery* of something of a personal nature by one party to another, to be held according to the purpose or the object of *the delivery*, and to be returned or delivered over when that purpose is accomplished."
>
> 2 Ency. Sup. Ct. Repts., 783.
> Story on Bailments (9th Ed.), Sec. 2.
> Jones on Bailments, 1.
> Schouler's Bailments, Sec. 2.
> 5 Cyc., 165.

All of these elements are distinctly, conspicuously and necessarily absent in the leasing of confined space to a box renter by this safe deposit company.

It is not even so much a bailment as one of those cases, adverted to by Mr. Justice Holmes in *Union Trust Co.* v. *Wilson* (*supra*), "in which the exclusive power of the so-called bailee gradually tapers away until we reach those in which the courts have held as a matter of law that there was no adequate bailment." For the operation of bailment, symbolical or otherwise, is not even here attempted. As was said by Mr. Justice Peckham, in *Security Warehousing Co.* v. *Hand*, 206 U. S., 421:

> "The general law of pledge requires possession, and it cannot exist without it. *Casey* v.

Cavaroc, 96 U. S., 467. There was scarcely a semblance of an attempt at such change of possession from the hands of the knitting company to the hands of the warehousing company. Actual possession of the property in question was exercised by and existed with the knitting company substantially the same after the issuing the receipts as before. It is a trifling with words to call the various transactions between the knitting company and the warehousing company a transfer of possession from the former to the latter. There was really no delivery and no change of possession, continuous or otherwise."

So is there no delivery to, nor possession by, the plaintiff in error safe deposit company, in its business of safety deposit. There is such control of access to the space rented, as excludes all, including the safe deposit company, except the renter himself. That is all. We, therefore, maintain that on this question there exists a confusion of reasoning and an erroneous conclusion.

This question of bailment, which the state Supreme Court adopts as the basis of its argument sustaining the constitutionality of the law at all points, is one of general law, and as we have said, we take it that this court is not bound by the conclusions of that court in this connection. The mere calling of the business one of bailment does not make it so. Nor does the erroneous conclusion that it is a bailment give to the plaintiff in error a possession and control and power of delivery over the contents of its lessees' boxes that obviously does not exist. Even if we concede that the state court had irrevocably determined that the relations disclosed

by the allegations of the bill of complaint constitute or are to be called a bailment, still the facts as to possession, control and access are not changed; and the business remains one in which the usual elements of bailment are lacking—a new and peculiar kind of bailment it must then be, that is without possession or control or power of delivery by the bailee of the thing bailed.

It is right here that the unconstitutionality of the law as to the safe deposit business becomes apparent. Their inclusion in the Act among instrumentalities that undoubtedly do possess the elements of bailment, is the fundamental basis of our complaint.

Having improperly assumed that there was possession and control in plaintiff in error, it is next urged by the Illinois court that the disturbance of that possession and control contemplated by Section 9 is a mere operation by the sovereign state of the well admitted power to regulate the devolution of property on death. To this is added, in order to get the state inside the box, the unwarranted deduction which we shall next discuss, that the state has a vested financial interest in the property of a deceased person. This is contrary to the rulings heretofore made by the decisions, both Illinois and Federal.

II.

THE NATURE OF THE STATE'S RIGHT.

The Supreme Court of Illinois, itself, in its opinion in this case, recognizes as firmly settled "that an inheritance tax is a tax upon the right of succession

and is not a tax upon the property itself." (Trans., 49; Rec., 81.) It cites to this, *Kochersperger* v. *Drake*, 167 Ill., 122; *Estate of Merrifield* v. *The People*, 212 Ill., 400. It was because it was the right of succession that was taxed and not the property that the exemptions, classifications and inequalities in the act escaped the constitutional prohibition. *Kochersperger* v. *Drake*, 167 Ill., at pp. 125 to 128; *Magoun* v. *Ill. T. & S. Bank*, 170 U. S., at pp. 298 to 300. Everything in the opinion herein must be taken as subject to that doctrine. It might be safely conceded that its statement that "the right of the state to such taxes is a vested right, and that such right vests in point of time at the time the estate vests—that is, upon the death of the decedent," is correct. (Trans., 41, *supra*.) But the deduction drawn, that "the state, therefore, has a vested financial right in the estate of every decedent in this state which is subject to the payment of an inheritance tax, and that right is equal in degree to that of the personal representative, the heir or devisee of the decedent," is erroneous, if meant to place the state in the succession as is the heir—as if it were an heir. In other words, it would then be not a tax upon the right of succession (of the heirs or devisees) but itself be the succession to a distinct part of the estate. The true theory is that the act imposes an excise tax upon the successors' (heirs', devisees', etc.) right to the property upon the death of its owner. Such erroneous deduction cannot stand with that court's settled doctrine that the tax is upon the succession. Plainly it is only

a part of a process of reasoning and not itself a ruling or decision.

This erroneous process of reasoning of the state court does not follow from any Illinois case, but seems to rest on a California case. (*In re Stanford's Estate*, 126 Cal., 112.) The California inheritance tax law is in terms a tax on "*all property* which shall pass by will," etc. (California Statutes, 1893, p. 193.) The Illinois Act is in terms a tax on "*the transfer*" of property, etc. (Hurd's Statutes, 1911, p. 1978.)

If an inheritance tax were a direct tax on property, as in California, the inference might perhaps be drawn. As it stands, however, its fallacy lies in deducing from the determination that the state has a vested right in *the tax*—the position that the state has a vested interest in *the estate* of a deceased person. Inasmuch as it has been repeatedly established that it is the *right of succession* that is the subject of the levy, there would seem to be a complete confusion of thought between a taxing body acquiring a vested interest *in a tax, and* in an *estate* or the property of an estate. If the tax, as has been uniformly held, both in Illinois and by this tribunal, is only an excise tax on the right of succession, it cannot in any sense, it would seem, become a vested interest in *an estate*. A few cases in this court will illustrate the distinction.

In *Knowlton* v. *Moore*, 178 U. S., 41, there was involved the constitutionality of the Federal legacy tax provisions of the War Revenue Act of 1898. Like the Illinois Act, that tax was levied *not* on the personal estate left by the deceased, but on the dis-

tributive shares arising from such property; on the "gifts, legacies, inheritances, transfers," etc., as the title to our Act describes it. The exact distinction, which we maintain the Illinois Supreme Court recognized and made but failed to follow in its opinion as to Section 9, is early pointed out in the discussion of the history and nature of death duties (p. 47):

> "Taxes of this general character are universally deemed to relate, not to property *eo nomine*, but to its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property, real or personal as such because of its ownership and possession. In other words, the public contribution which death duties exact is predicated on the passing of property as the result of death, as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy."

The case of *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S., 283, is then reviewed where Mr. Justice McKenna held that the Illinois Act, to which the Act of 1909 is closely analogous, was constitutional, and, on a searching analysis of the history of inheritance taxes, that "an inheritance tax is not one on property, but one on the succession"; and found (at p. 298) that the Supreme Court of Illinois had so held in harmony with the majority of other courts of the country (170 U. S., at p. 298).

Further along in *Knowlton* v. *Moore*, at p. 56, Mr. Justice White concludes, on a review of the entire field, that whatever name or mode of assessing is adopted for the tax, "tax laws of this nature in all countries rest in their essence upon the principle

that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested."

So much for the *nature* of death duties. As the opinion points out further (p. 57):

> "Confusion of thought may arise unless it be always remembered that, fundamentally considered, it is the power to transmit, or the transmission or receipt of property by death which is *the subject levied upon by all death duties.*"

Then in holding that the power of Congress to tax inheritances exists despite the exclusive right of the state to regulate the transmission of property upon death, it having been contended that because that right is exclusive, Congress cannot levy a tax of this character, the court says (p. 59):

> "But the fallacy which underlies the position contended for is the assumption that the tax on the transmission or receipt of property is imposed on the exclusive power of the state to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate."

It may be the property itself is subject to diminution because of the tax, but its purpose in the operation of fixing the tax is to assist in the ascertainment of the amount of the tax. Quoting further from this court's opinion (p. 60):

> "Certainly, a tax placed upon an inheritance or legacy diminishes, to the extent of the tax,

> the value of the right to inherit or receive, but this is a burden cast upon the recipient, and not upon the power of the state to regulate."

In *Home Insurance Co.* v. *New York*, 134 U. S., 594, where a tax upon the privilege of the insurance company to do business in New York was sustained, although in the amount so taxable there might be property otherwise exempt, Mr. Justice Field said:

> "It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United States composing a part of that stock. The statute designates it a tax upon the 'corporate franchise or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year."

The argument of the Illinois court, then, confuses the two ideas of an interest in an estate, or property, because of a tax *on* that property, and an interest in a tax which is levied on the right to receive that property, and reference is had to the estate simply as a measure of the tax. Mr. Justice Day expresses the same idea in *Flint* v. *Stone Tracy Co.*, 220 U. S., 107, 162 (the *Corporation Tax* case), in answering the point that certain corporations had large non-taxable investments not used in their business and therefore the selection of the measure of the income from all sources was void, because it *reached property that was not the subject of taxation*, says:

> "But this argument confuses the measure of the tax upon the privilege, with direct taxation of the estate or thing taxed."

The inference of state interest in the property if sound will not alone justify the ruling of the State Court, for it is obvious that if the safe deposit company has not possession and control of the property, the state must look to the one in whom alone the right of access exists—the personal representative of the deceased. For the statute (as construed and applied by the Supreme Court of Illinois) conclusively to assume or assert possession and control in the safe deposit company and deal with the company on that assumption, is to legislate or force the company into a relation it did not contract for or occupy in violation of Section one of the Fourteenth Amendment.

Now, the company having no power to give access except by a breach of its business obligation, and its business being founded on the denial of access to all except the contracting party, his deputy and his personal representative on death, a law which not only strikes down the contractual obligation to prevent access, but lets the company, as well as the state, into the box, compels it to take manual possession of the contents, and to assume the power to transfer or deliver the same in certain ways and under certain penalties, is not sanctioned by the Federal Constitution.

Impairment of contract, the deprivation of liberty and property, the denial of equal protection of the laws, are all involved.

This court is not bound by the opinion of the State Court as to the existence, nature or scope of the right or contract claimed to be infringed. That

is for this court to determine, irrespective of the State Court's conclusions.

> "The existence of the contract or right is part of the federal question itself."
>
> *Hoadley* v. *San Francisco*, 124 U. S., 645.
> *Scott* v. *McNeal*, 154 U. S., 34, 45.

III.

THE APPLICATION OF THE FOURTEENTH AMENDMENT.

The business of safety deposit is founded on a perfectly legitimate, human desire and right—to have a place where one's valuable papers may be kept inviolate from physical molestation of any kind, where the sacred right of privacy may be preserved, and safety and security from fire or burglary be assured so far as it is in human power so to do. The business of the safe deposit company has always been to provide for the box renter the greatest possible amount of safety and privacy at a minimum of expense to the lessee of its space. The right to continue to do this business is secured by the Constitution.

The right of an individual or corporation to continue to pursue a lawful business, untrammelled by legislative burdens, except such as are interposed through such police regulations as are consistent with constitutional guaranties is within the provision that a state may not deprive any person of liberty or property without due process of law. The right to contract is property in this sense. It is well settled that corporations are "persons" within the meaning of that provision of the amendment which forbids

any state to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws.

Cargill Co. v. *Minnesota*, 180 U. S., 452.
Carroll v. *Greenwich*, 199 U. S., 401, 409.
Gulf, etc., Ry. v. *Ellis*, 165 U. S., 154.
Hale v. *Henkel*, 201 U. S., 43.
National Council U. A. M. v. *State Council*, 203 U. S., 151, 162.

(1) THE ACT INCORRECTLY ASSUMES THAT A DEPOSIT COMPANY HAS IN ITS POSSESSION OR UNDER ITS CONTROL THE CONTENTS OF ITS RENTED BOXES AND CAN DELIVER OR TRANSFER THE SAME.

In the first place, as we have seen, the law incorrectly assumes that a safe deposit company has in its possession and under its control "securities or deposits or other assets" of its customers, at death or at any other time.

(a) "POSSESSION MEANS EXERCISE OF POWER OVER A CORPORATE THING, AT PLEASURE, TO THE EXCLUSION OF ALL OTHERS.

To be sure, the box renter cannot enter without the co-operation of the company; but that is a very different thing from asserting that the company has "in possession or under control" the contents of a rented box, to which it has no right or power of independent access outside of forcible entry by drilling the lock. "Possession" implies exclusion of all others—which cannot be had here so long as the box renter or his personal representative has the other key. "Control" is synonymous with superintendence or management, and is equally inconsistent

with the mere holding by the company of a key *which will not admit to the safe.*

> "'Possession' under the statute (prohibiting assignees from taking possession of assigned property) means much more than 'access.' 'Possession' is that condition of fact under which one can exercise his power over a corporeal thing at his pleasure, *to the exclusion of all others.* Burrill, Law Dict. Tit. 'Possession.'"
>
> *Rice* v. *Frayser*, 24 Fed. Rep., 460, 463.

> "By possession is meant that condition under which one can exercise his power over property at his pleasure to the exclusion of all others."
>
> *Gilkeson-Sloss Commission Co.* v. *London*, 53 Ark., 88.

By the term "possession" in a statute making a person in possession of certain kinds of cattle liable for infection to other cattle, our Illinois Supreme Court holds "must have been intended that usual and well-known possession that men generally have of personal property; that where a party had a mere lien, and not the actual control of property, he could not be regarded in the possession in the sense the word is used in the statute."

Smith v. *Race*, 76 Ill., 491.

Union Trust Co. v. *Wilson*, 198 U. S., 530, 537.

(b) "CONTROL" HAS NO LEGAL OR TECHNICAL MEANING APART FROM ITS POPULAR SENSE, AND IS SYNONYMOUS WITH "MANAGE."

The Illinois Supreme Court, too, has placed such interpretation on the word "control" as excludes

the possibility of the contents of a safe deposit box rented to a customer being "in possession or under control" of that company, as the business has always been conducted.

In *Ure* v. *Ure*, 185 Ill., 216, at page 218, the court said:

> "The word 'control' has no legal or technical meaning distinct from that given in its popular acceptation. Webster employs the word 'superintendence' as expressive of the meaning of the word 'control,' and gives the word 'control' as one of the synonyms of the word 'superintendence,' as follows: 'The act of superintending; care and oversight for the purpose of direction and with authority to direct.' The word 'manage' is defined to mean 'to direct; control; govern; administer; oversee' (Anderson's Law Dict.); and the words 'control' and 'manage' have been held to be synonymous. *Youngworth* v. *Jewell*, 15 Nev., 48."

(2) Beyond this false assumption of the law complained of, that safe deposit companies have a right of possession and control over the contents of the boxes of their customers, the law assumes that the safe deposit company has the power *to deliver or transfer* the contents of boxes, in the case of death, which is wholly obnoxious to the very idea of a safety deposit business. (Trans., 31.)

Furthermore, the law assumes that for at least ten days the possession and control of the company excludes the rights of those entitled to the property.

This interference imposed by the law, with the right of plaintiff in error to pursue a proper and legitimate calling, and this restriction of the inde-

pendent enjoyment of it, without any process of law whatsoever, is a deprivation of *liberty and property*, under the first section of "the greatest of all the amendments", to the United States Constitution, the XIV: "Liberty" here means, liberty to engage in lawful business. It means the right of contract. It may be violated by prohibiting its full use as effectually as by taking it away entirely.

State v. *Peel Splint Coal Co.*, 36 W. Va., 856.

State v. *Goodwill*, 33 W. Va., 179.

It would be hardly necessary to quote from the familiar case of *Allgeyer* v. *State of Louisiana*, 165 U. S., 589, as to the meaning of liberty in this connection. The cases cited in that opinion all look to the privilege of pursuing an ordinary occupation as an essential part of the rights of liberty and property guaranteed by the XIV Amendment.

Gulf, etc., Ry. v. *Ellis*, 165 U. S., 150, 154.

Carroll v. *Greenwich Insurance Co.*, 199 U. S., 401.

The Illinois Supreme Court in *Braceville Coal Co.* v. *The People*, 147 Ill., 69, in holding that an act which imposed a penalty on certain corporations to the exclusion of others, was unconstitutional as depriving the corporations so affected of "the right of liberty and property" said (p. 71):

> "Property in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion, possession and power of disposition which may be acquired over it, and the right of property, preserved by the constitution, is the right not only to possess

and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt."

In *People* v. *Steele*, 231 Ill., 351, after enumerating certain lawful businesses, the court says:

> "The legislature may not prohibit any one of these avocations at its mere pleasure. It may not *arbitrarily impose any vexatious burdens on the pursuit of any of these vocations.* Whatever restrictions are required in the interest of public morals, health, security or welfare, the legislature may impose, and no other."

(3) If a deprivation of liberty and property is involved there is no process of law whatever contemplated for the interference with its liberty above described. The mere passage of a law making it possible is not "due process of law."

To say that the state can make anything due process of law through its legislative enactments, that would have the effect of invading or destroying the liberty or property rights of any person within its jurisdiction, would be to hold that the prohibition contained in the Fourteenth Amendment is of no avail, or that it has no application where the invasion of private rights is effected under the forms of state legislation.

Davidson v. *New Orleans*, 96 U. S., 97, 102.
Hurtado v. *California*, 110 U. S., 516, 535.
Smyth v. *Ames*, 169 U. S., 527.

(4) If the business of safety deposit is a legitimate calling, this law which interferes with the pursuit of it, in seeking to give it control and posses-

sion of its customers' property and thus deprive it of its business, is an interference with its liberty and property of contract without due process of law, and is prohibited by both state and federal constitutions.

If any doubt could be expressed as to the application of the "liberty" clause to artificial persons, the "property" clause is extended to corporations without a dissenting voice. And it is in this very particular of privilege of contract that Section 9 trespasses most heavily on plaintiff in error. It is not of material importance whether it be considered as a "liberty" of contract, or a right of contract as a property right. As was said in *Matthews* v. *The People*, 202 Ill., 401:

> "It is now well settled that the privilege of contracting is both a liberty and a property right. Liberty includes the right to make and enforce contracts, because the right to make and enforce contracts is included in the right to acquire property."

To compel a safe deposit company that is in the lawful business of renting boxes to customers, and whose only duty with respect to the same is to see that these boxes are properly guarded from all access but that of the renter, to forcibly assume the "possession and control" of the contents of the boxes upon the death of the lessee, to the exclusion of all others, is an unwarranted interference with the liberty to pursue a lawful calling, or with the right to carry on such business through contracts which exclude in every possible way the idea of possession and control by the company. If the business in-

volves and requires possession and control by the company of the customers' property, the peculiar business of safety deposit, as it has been developed and carried on and as distinguished from storage, disappears and there is only left the *storage* business—an entirely different thing, where delivery and possession and control and transfer of the thing stored are all present. Warehousemen are in this latter business. But the safety deposit business is entirely different, requires special and elaborate equipment, and is based on the relation of lessor and lessee of guarded *space*, and not on the bailment of specific articles. To superimpose upon it the elements of possession and control and transfer, the handling, that is, of the property the lessee puts in his box, destroys the liberty to carry on a legitimate and accustomed business, and the right of contract as a property right. See *Williams* v. *Fears*, 179 U. S., 270, 274, and *Bailey* v. *The People*, 190 Ill., 28, at page 33, where it was said:

> "The privilege of contracting to receive gains and profits for the right to use property granted to another is both a liberty and property right. The right to make a reasonable contract with reference to the use of a thing is an attribute of property and a property right. The right to entertain lodgers in a lodging house, and to fix by contract with them the price to be paid for such accommodation and the number who shall occupy the same room at the same time for sleeping purposes, is a liberty and also a property right. Any restriction upon or abridgment of this right deprives the citizen of both liberty and property."

But our law goes further and proceeds to penalize the failure of a safe deposit company to assume this hitherto unheard of right and power to possess and control and transfer its customers' property, after introducing a further element of interference with the box renter's property. (Trans., 32.)

Thus it will be seen, that the Attorney General and State Treasurer and their representatives are permitted to examine the contents of a box, which may contain not only the deceased renter's effects, but the property of a stranger in the case of surviving joint renters. This is a further unwarranted and unreasonable invasion of property rights provided by the law, looking to the serious damage and destruction of the complainant's business.

PENALTY.

The law proceeds to penalize the safe deposit company for failure to comply with these new business-destroying and property-right disturbing features of the law, thus:

> "Failure to serve such notice, or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render said safe deposit company * * * liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets * * * and in addition thereto, a penalty of $1,000; and the payment of such tax and interest thereon, or of the penalty, above described, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction." (Trans., 32.)

In other words, a safe deposit company is compelled by this enactment to be an officer against its will for the ascertainment and collection of an in-

heritance tax, with which it is not in any way concerned. Furthermore, its relation to the property by which the tax is measured is such as to be utterly repugnant to the performance of such a duty.

(5) TO FORCE AN OFFICE OR DUTY ON ONE AGAINST HIS WILL INFRINGES THE RIGHT OF CONTRACT.

It is evident that a law forcing upon a corporation, against its will, and outside of its business, a duty and an obligation with respect to property not its own, which it does not have access to, that it does not have actual possession of, that it does not in any sense control, deprives that corporation of its property right to enter into or refuse to enter into such contracts as it may determine in the course of its legitimate business.

The act also requires that it must take possession of the contents of the space and refuse to deliver it or transfer it to its proper owner, unless ten days' notice of such delivery or transfer is given the state authorities; and the safe deposit company must not make any delivery or transfer of such property "without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities" unless the state authorities consent thereto in writing. And these same authorities are given the power "to examine said securities, deposits or assets at the time of such delivery or transfer." The safe deposit company is here made an arm of the state government for the collection of a tax subversively of its own rights and interests, without reward, against its consent,

and in flagrant deprivation of its property rights.

The State Supreme Court in its opinion cites the fact that numerous statutes have been passed which require banks, trustees, executors, administrators and agents to return for taxation property of others in their possession, and such statutes frequently provide that if the bank, trustees, executors, administrators and agents holding such property surrender the same without the tax being paid, they shall be liable for the tax. (Trans., 56.) It also cites the fact that in many instances the corporations have been made collecting officers by being required to deduct the taxes from the stockholders' interests and pay them over to the state.

In all such instances the persons or corporations upon whom the law imposes the duty are already agents of the owner, in full possession, or come within the class of those instrumentalities named in Section 9 other than safe deposit companies, who actually do have the possession and control of the property subject to the tax. The safe deposit company is no such agent.

The object of the law in the cases cited is to place the duty where the tax can most readily be collected, and the power of recoupment against the real owner exists in the agent. But in all such cases this method of tax collection is only exercised where actual possession and control of the property sought to be reached are already in the person on whom the burden of paying the tax is thus primarily made to fall. Other situations where this method of indirect tax collection has been adopted are familiar. Receivers, debtors, grain elevators and distillers are among

those relations where the convenience of the means employed, and the relation of the parties having possession and control of the property to be taxed, justify the end. But where is there authority or analogy for the imposition of such a duty upon a person or corporation, who, so far from being in control and possession of the property sought, is expressly and contractually excluded from such possession and control and without such exclusion from possession and control, could not conduct the business?

If the company fails in any of these invasive acts of interference it becomes liable itself for the payment of the tax—although it has not and could not have that possession and control that justifies such a method of tax collection where an agent or bailee is involved. Furthermore, a penalty of $1,000 is added for failure to commit what amounts, under the conditions of safety deposit business, to a tort upon the property rights of its customers.

(6) TO IMPOSE UPON ONE A TRUSTEESHIP WITHOUT HIS CONSENT DEPRIVES HIM OF HIS PROPERTY RIGHT OF VOLUNTARY CONTRACT.

No one can be forced by the Legislature into a position of trustee without his consent. Under the theory of the law complained of, and as the bill alleges, the safe deposit company is wrongfully given possession and control of the contents of all its safe deposit boxes, under such conditions as to access thereto, inspection thereof and control of removal, as to make it a trustee of said contents. It thereby becomes something more than a bailee. It is a trustee with express and active duties.

No person can be compelled to undertake the duties of an express trustee, and not even the Legislature can impose such duties on him. In *Bethune* v. *Dougherty*, 21 Ga., 257, an act of the Legislature was passed making a certain man assignee of a railroad. The case had previously been before the court in 7 Ga., 90, and it was there held that an acceptance of the trust was necessary in order to constitute the appointee an assignee, and that the Legislature could not make a citizen an officer against his consent. The court then goes on:

> "We will only add that to force a citizen to be an assignee, subject to the duties, responsibilities, pains and penalties provided by the statute, would, in the language of the Judge who wrote out the opinion in the former case, make the government a despotism and the Legislature a tyrant."

> "No one is bound to accept the office of trustee."
> Underhill on Trusts (Am. Ed.), 190.

> "No one is *compellable* to undertake a trust."
> Perry on Trusts, Section 259.

> "No person can be compelled to undertake the duties of trustee of an express trust, and not even the Legislature can impose the duty on him."
> 28 Am. and Eng. Ency. of Law, 971.
> 39 Cyc., 77, 252.

> "Voluntary or express trusts cannot be imposed on any person unless he agrees to accept, or by clear implication assumes the duties and liabilities."
> *Taylor* v. *Holmes*, 14 Fed. Rep., 498, 509.

"It need scarcely be said that an appointment as trustee of an express trust cannot be forced upon one against his wishes."
Beckett, Trusts and Trustees, Sec. 548.

(7) The attempted imposition upon plaintiff in error, without its consent, of the office of trustee deprives it of its right of contract. The law in question, which forces it into the position of a trustee of those contents, with active duties of making a "delivery or transfer of the same," or "retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets," and of permitting an examination of the same by the State Treasurer and Attorney General, under penalties, is clearly offensive to the clause of the Fourteenth Amendment that forbids a state to deprive anyone of *property* without due process of law.

(8) SAFE DEPOSIT COMPANIES ARE NOT TO BE DENIED THE EQUAL PROTECTION OF THE LAWS.

If the safe deposit company is a bailee of its box renters' property, it must be conceded that it is a peculiar and unusual kind of bailee—something quite in a class by itself. It is a bailee that does not have actual possession and control of the thing bailed. But, at the same time, if it is a bailee at all, then the business of safety deposit is a peculiar class or form of bailment. Its only duty with respect to the thing bailed is to exercise ordinary care in guarding the locked space from intrusion of wrongdoers. If that is so, then any law that arbi-

trarily classifies it with the general class of bailees for hire, namely, ordinary bailees who *do* have possession and exercise control of the bailment delivered to them, and which they can deliver or transfer back to the owner, denies to the safe deposit company the equal protection of the laws.

If they are put in that class, however, then they are clearly the victims of unjust and radical discrimination in that in order to conform to this superimposed relation of bailment, they must exercise a control and assume a possession and a power of transfer and delivery of their customers' property, which they do not possess, and which they can only assume by illegal action, at total variance with the essence and nature of their established business. No such disastrous effect follows compliance with the law on the part of the other bailees named and included therein. Therefore, the law as to safe deposit companies is discriminatory, and they are denied the equal protection of the laws.

But suppose we take safe deposit companies out of the class of bailees for hire, where they obviously do *not* belong, and put them in the class of lessors of rented space, where they actually, in form and substance belong. Then by including them in this law there is plainly unjust discrimination, for against no other form of lessors or landlords is it directed—although the owner of an apartment or office building, may, at the time of his tenant's decease, have in his possession or under his control, assets of the deceased, to the same extent exactly, no more and no less, that a safe deposit company has over the contents of its tenants' safety

deposit boxes. Yet it could not be seriously urged for a moment that this law compels an apartment owner to place a padlock on his deceased tenant's flat upon his death, deny access thereto to family and friends and personal representatives, and assume delivery, possession and control of the contents of that flat under the provisions of this Section 9. But this is precisely what this law imposes upon a safe deposit company, alone out of all the class of lessors of rented space, and thereby arises a clear denial of the equal protection of the laws.

Here there is an attempt at a classification of safe deposit companies with those having in possession and under control the property of another. The duties imposed are utterly subversive of the business of safety deposit. They are *not* subversive of any other instrumentalities named in the classification. Therefore there is a purely arbitrary action of government. Equally so is there denial of equal protection, if the statute is directed at safe deposit companies in their normal classification of lessors of space, because there is no reason whatever why they should be selected for discrimination and penalty on the death of their lessees rather than other landlords of rented space.

> "The equal protection of the laws is a pledge of the protection of equal laws."
> *Yick Wo* v. *Hopkins*, 118 U. S., 356.

While it has been said by this court in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 558, that "no rule can be formulated that will cover every case" as to what constitutes a denial of the equal protection of the laws, yet the court in that case quotes

from *Missouri* v. *Lewis*, 101 U. S., 22, 31, "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances." And approval is also given to this pronouncement from *Barbier* v. *Connolly*, 113 U. S., 27, 31, that the Fourteenth Amendment "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; * * * that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition." *Hayes* v. *Missouri*, 120 U. S., 68, 71, is quoted in the same case, to the effect that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, "shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." Further excerpt is made from *Duncan* v. *Missouri*, 152 U. S., 377, thus:

> "Due process of law and the equal protection of the laws are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

These interpretations of the Fourteenth Amendment are used by the court in the principal case to support the holding that an anti-trust law of the State of Illinois forbidding combinations looking towards restriction or competition in trade, and prescribing penalties, but excepting from its operation "agricultural products or live-stock while in the hands of the producer or raiser," is in conflict with the Constitution. Mr. Justice Harlan says:

> "These principles, applied to the case before us, condemn the statute of Illinois. We have seen that under that statute *all* except producers of agricultural commodities and raisers of live stock, who combine their capital, skill or acts for any of the purposes named in the act, may be punished as criminals, while agriculturists and live stock raisers, in respect of their products or live stock in hand, are exempted from the operation of the statute, and may combine and do that which, if done by others, would be a crime against the state. The statute so provides notwithstanding persons engaged in trade or in the sale of merchandise or commodities, within the limits of a state, and agriculturists and raisers of live stock are all in the same general class, that is, they are all alike engaged in domestic trade, which is, of right, open to all, subject to such regulations, applicable alike to all in like conditions, as the state may legally prescribe.
>
> "The difficulty is not met by saying that, generally speaking, the state when enacting laws may, in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be

made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf, Colorado and Santa Fe Railway* v. *Ellis*, 165 U. S., 150, 155, 159, 160, 165. These principles were recognized and applied in *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S., 79, in which it was unanimously agreed that a statute of Kansas regulating the charges of a particular stock yards company in the state, but which exempted certain stock yards from its operation, was repugnant to the Fourteenth Amendment in that it denied to that company the equal protection of the laws." (184 U. S., 560.)

In *Gulf Railway* v. *Ellis*, 165 U. S., 150, 165, Mr. Justice Brewer said:

"It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted

classification—and is not a mere *arbitrary selection.*"

IV.

IMPAIRMENT OF CONTRACT.

The bill charges that plaintiff in error was incorporated in 1881 under the laws of Illinois for the express purpose "of providing a suitable building or buildings with vaults and safes, with a special regard to protection against loss by fire, robbery or otherwise and to carry on *the business of safety deposit and storage.*" That it entered into and continued said business up to the time of the filing of the bill and had built up a large business consisting mainly of renting for hire safe deposit boxes or safes specially constructed for that purpose. (Trans., p. 28.) The method of doing the business has been fully gone into above.

It is noted that the statement of the object in the certificate of incorporation, which corresponds under the general incorporation law of Illinois to the granting of a charter, differentiates between the business of "safety deposit" and "storage." The latter is undoubtedly bailment. The former is distinctly not.

The corporate grant of power to carry on this "business of safety deposit," acted on continuously by plaintiff in error, is a right beyond the power of the Legislature that gave it, to arbitrarily impair.

What that business is—what the nature of this contract is—has already been fully discussed. The state Supreme Court say that it constitutes the relation of bailor and bailee. We argue with the ut-

most confidence that it does not. It is part of the constitutional question submitted for this court to determine for itself the nature of the contract, which, it is contended, is impaired by Section 9 of the act complained of. The determination of the state Supreme Court on this point can have no binding effect on this court. This is too fully settled to require the citation of authorities. We merely call attention to

Mobile & Ohio R. R. v. *Tennessee,* 153 U. S., 486, 494.

Douglas v. *Kentucky,* 168 U. S., 488, 502.

Louisville Gas Co. v. *St. Paul,* 181 U. S., 143.

Terre Haute, etc., R. R. v. *Indiana,* 194 U. S., 579, 589.

Powers v. *Detroit, etc., R. R.,* 201 U. S., 543, 556.

If, then, this court adopts our analysis of the "business of safety deposit," as already fully discussed (and this is determined from the allegations of the bill of complaint), the legislative grant constitutes a contract by which plaintiff in error is authorized to continue in the business there described, viz., of making leases of carefully guarded space, into which space the lessee, and on his death his legal representative, may place or remove at pleasure, whatever he wills. The contents of the boxes never pass through the hands of the company. It has no possession nor control of the same. It does not receipt for, handle, know, deliver nor transfer the same. It has no access to the same (except by force). It cannot prevent access thereto to the

rightful owner. It must keep off all unauthorized persons. Such is the nature of the business. The distinctive feature of it is that the operation of bailment is absolutely wanting.

It is perfectly obvious that an act of the Legislature that requires the plaintiff in error to assume the elements of bailment forbids and destroys the business of safety deposit. It impairs the contractual right granted by the charter to the point of practical destruction.

It cannot matter that the law does not in so many words prohibit the business. It places such restrictions upon it that its further continuance is destroyed.

Nor does the reserved power in Section 9 of the Corporation Act of Illinois that

> "The General Assembly shall, at all times, have power to prescribe such *regulations and provisions* as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act" (Hurd's Statutes 1911, p. 561),

give to the Legislature the power to destroy the vested rights it has already granted. The Illinois Supreme Court has itself determined the effect of this regulating clause in a recent case:

> "Even when the power of the state to alter or amend a charter is expressly reserved in the grant, it is still subject to the limitation that it shall not be exercised in such way as to destroy vested rights or impair the obligations of contracts. The Legislature cannot reserve the right to pass an unconstitutional law under the

guise of altering or amending a corporate charter."

Venner v. *Chicago City Ry.*, 246 Ill., 170, 176.

So we say this act, so far as it destroys the very purpose of the safe deposit business by placing the possession and control and disposal of the contents of its rented boxes in the company, is offensive to Article I, Section 10 of the United States Constitution, that:

"No state shall * * * pass any * * * law impairing the obligation of contracts."

The provisions of Section 9 of the law complained of strike with particularly offensive force this business of safety deposit, where boxes are leased which are designed and safeguarded with all the scrupulous care that science and human ingenuity can devise to protect the owner of the contents from disturbance or invasion of his privacy and security.

V.

THE INVASION OF CUSTOMERS' RIGHTS AND THE CONSTITUTIONAL EFFECT THEREOF ON PLAINTIFF IN ERROR.

The business of safety deposit is not only seriously injured by the direct operation of the terms of the act upon its conduct, but it is also directly impaired and destroyed by the withdrawal of its customers' business caused by the unconstitutional invasion of customers' property rights involved in its enforcement, which operates to deprive plaintiff in error of rights protected by the Federal Constitution.

We now consider the direct effect certain unconstitutional invasions of our lessees' rights have upon

our business in the case of joint and business partnership box leases.

Objection was made to this line of discussion in the brief in the state court, because we thereby seemed to champion not our own, but our lessees' grievances, claiming that the unconstitutional acts and provisions affecting its lessees do not concern the safe deposit company. Clearly, plaintiff in error cannot do business without customers, and any unconstitutional feature of the act which affects unfavorably customers of a safe deposit company in their relations with that company, affects that company.

In this connection, we are not "a stranger to its grievance," as was the test in *Lampasas* v. *Bell*, 180 U. S., 276, 284. We have an intense legal interest in defeating the measure—which is unconstitutional, both as regards ourselves and our customers—in so far as it touches the business of safety deposit. In the particulars we are about to discuss, of offenses against the rights of surviving joint and partnership box renters, it is, of course, not *our* property that is invaded, but by reason of that invasion that we are compelled under the law to be a party to, our customers are driven away and our business is destroyed. We are, therefore, not strangers to the law, nor to its effect in these particulars, in seeking to have it declared unconstitutional, but are parties directly interested in these very features which we are compelled to impose upon our customers, and have a vital concern in the litigation that draws it in question. If we are made tax collecting officials and are compelled to act

towards our customers in a manner which violates their constitutional rights, the question of that unconstitutionality becomes plainly a matter of judicial inquiry here because of its bearing on the business of safe deposit companies. It is not an "academic inquiry." The bill alleges an injury to plaintiff in error "in so far as said law and its illegal methods of enforcement interfere with and seriously threaten the property rights of your orator in the conduct of its safe deposit business as aforesaid." (Trans., 34.) The ways in which the act affects the plaintiff in error and its customers, and the provisions of the Constitution that are infringed, are set out. We answer fully the test set down in *Chadwick* v. *Kelley*, 187 U. S., 540, 547, of being "directly and certainly affected" by the state legislation in question. As was said in *Hooker* v. *Burr*, 194 U. S., 419:

> "A party insisting on the invalidity of a statute as violating any constitutional provision, must show that he may be injured by the unconstitutional law before the courts will listen to his complaint."

That we have done by the allegations in the bill. Or, as was more recently said in *Standard Stock Food Co.* v. *Wright*, 225 U. S., 540, 550:

> "He must show that the alleged unconstitutional feature of the law injures him and so operates as to deprive him of rights protected by the Federal Constitution."

That, too, have we done. We believe this court, as did the state court, will consider all features of the law, in its entirety, as it affects safe deposit

companies, if it, as construed by the Illinois court, is found to be unconstitutional.

(1) A SURVIVING JOINT BOX RENTER, HAVING A RIGHT OF EXCLUSIVE ACCESS TO THE JOINT BOX, IS DEPRIVED OF LIBERTY AND PROPERTY WITHOUT DUE PROCESS AND IS DENIED THE EQUAL PROTECTION OF THE LAWS, BY AN ACT WHICH INTERFERES WITH THAT ACCESS UNDER GUISE OF AN INHERITANCE TAX INVESTIGATION DIRECTED AT ANOTHER'S PROPERTY.

The law supposes possession and control by the safe deposit company of the securities, deposits and other assets belonging to or standing in the name of a decedent, "or standing in the *joint* names of such a decedent *and one or more persons.*" The safe deposit company is forbidden to deliver or transfer the same "to the survivor or survivors when held in the joint names of a decedent *and one or more persons*" unless certain conditions are complied with; and the company is forbidden to "deliver or transfer any securities * * * belonging to or standing in the joint names of a decedent *and one or more persons.*" "And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, *to examine said securities,* deposits or assets at the time of such delivery or transfer." (Trans., 32.)

Now, the amended bill alleges that 4,104 out of the 9,702 boxes rented are under contract of rental "jointly by more than one individual, any one of whom has the right and privilege of keeping property in said safe deposit boxes and having access thereto exclusively with his joint renters." (Trans., 29.) It further alleges that "the demand for joint rentals is constantly increasing," and that

"to all said joint renters, as well as individual customers, your orator owes the duty of safe keeping and undisturbed possession." (Trans., 30.)

A joint rental of a safe deposit box is manifestly a joint adventure in a single transaction, a joint right of occupancy by two or more persons of a single box. Their possession is in common, and each has a right after as well as before the death of either to the enjoyment, use and control of, and undisturbed access to, the box to the extent of his interest.

When a joint lease is made—which is the same as the individual lease, with the exception that alternative names are inserted, *i. e.*, "John Smith *or* Henry Jones"—on the death of one, the right of access of either to the box, that existed while both were alive, continues in the survivor, and he may keep, and generally does, his separate property in the joint box, and may continue to do so after as well as before the death of his joint renter. Whatever separate property he had in the box before the death of the joint renter is not affected by the death of that joint renter, nor is the survivor's right of access to that box and to his separate property.

What we complain that this law does is to deny to the surviving joint tenant his right of access to the box and to his separate property in the box, and compels the safe deposit company to prevent such rightful access.

It is particularly manifest in this connection that possession and control and search of the contents of this box cannot in any way be asserted by these tax officials, or anyone, without subjecting to examina-

tion, disturbance and exposure against his will and consent *the separate property in the box belonging to the surviving joint tenant*, as well as the invasion of the right of access to the box which belongs to the living and surviving box renter. It is a perfectly lawful contract for one to rent a safe deposit box jointly with another. And yet the effect of the law complained of is, on the death of the joint tenant, to take from the survivor his liberty and property without due process and deprive him of the equal protection of the laws, as well as to deprive the company of its contract right to permit him access to and enjoyment of his leased property.

The state Supreme Court says in this connection (Trans., 52):

> "All that would be necessary for the appellant to do to protect the rights of the surviving lessee would be to deliver to him his property, and protect the parties representing the deceased by holding the property which belonged to the deceased lessee."

The significance of this becomes apparent when one stops to consider what this "delivery to him of his property" entails. The safe deposit company is bound to select and determine at its peril the title to this property, assuming that it can constitutionally invade it. Even if the imposition of a power of transfer and delivery of the contents of the box is to be taken as a construction by the court of Section 9, then the act AS SO CONSTRUED is unconstitutional in its operation and effect by forcing upon the safe deposit company involuntary and precarious duties and responsibilities in determin-

ing to whom does the property belong. The deprivation of the company's constitutional rights in this analysis becomes very clear.

Joint box renting existed for years before this act was passed. It is not a fraudulent scheme and device, concocted for the purpose of evading the provisions of this very recent act. Fraud is not to be presumed on the part of third persons. If it is a fraudulent scheme, the participants deserve no consideration; but is it not going rather far to take the scheme for granted? Suppose an act forbade a man's partners, clerks and stenographers to leave their respective homes after April 1st, until his taxes were collected, for fear that if he had their aid he might be able to work some plan of evading payment? Where are we to stop? Since when has a presumption of fraud been indulged about a long-standing and legitimate business transaction? But the argument verges on the ridiculous when we find it stated that the Illinois Legislature of 1909, "*anticipated* such schemes." The practice of joint box renting was born before many of the legislators were.

(2) INTERFERENCE WITH FREE ACCESS TO PROPERTY, AND EXAMINATION THEREOF BY MINISTERIAL OFFICIALS, WITHOUT NOTICE OR JUDICIAL HEARING, WHERE THE OBJECT OF THE INQUIRY IN NO WISE APPERTAINS TO THAT PARTICULAR PROPERTY, IS DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.

In the fact that the examination of the contents of the box is to be made, under the law, by purely ministerial officials, there is a further exercise of governmental tyranny, without process of law of

any kind. To undertake to determine without judicial inquiry, or process, or notice of any kind, what property belongs to the surviving joint tenant, what property is joint property, and to what extent, and what property belongs to the deceased, without the presence of one the title to whose property is thus passed upon, is a deprivation of property without due process, as well as an unconstitutional imposition on the company itself. It is not enough to say that the inconvenience might be trifling in some instances. In others it might be incalculable. The thing itself, and not the extent of its damage, is what the Constitution forbids.

In *City of Chicago* v. *Wells,* 236 Ill., 129, at page 132, it was said:

> "Section 2 of the bill of rights provides that no person shall be deprived of property without due process of law, and under that provision no person can be deprived of property by legislative act or ordinance. The ordinance in question does not deprive appellant of her land, but it does *deprive her of her control and dominion over it.* In Austin on Jurisprudence (Vol. 2, p. 817) property is defined as follows: 'Taken with its strict sense it denotes a right—indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration—over a determinate thing.' In *Rigney* v. *City of Chicago,* 102 Ill., 64, the court said (p. 77): 'Property, in its appropriate sense, means that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or subjects, and generally to the exclusion of all others, and doubtless this is substantially the sense in which it is used in the constitution.' "

If the separate effects of a surviving joint box renter are kept from his access, possession and control, are examined and sorted and apportioned as to ownership, without due process, the Constitution is violated. And if by these acts the business of safety deposit is invaded—or if the safe deposit company is by the terms of the act complained of and as contended by the state court, compelled to become the instrument of wrongful invasion of its customers' property, it surely has ground to assert its unconstitutionality.

(3) WHAT HAS BEEN ALREADY URGED AS TO DEPRIVATION OF LIBERTY, PROPERTY AND EQUAL PROTECTION OF THE LAWS, APPLIES WITH EQUAL FORCE TO SURVIVING JOINT BOX RENTERS.

The law clearly tends toward the destruction of a hitherto legal and proper machinery of business—the right to use safe deposit boxes, because the invasion of privacy and security so essential to its usefulness is thereby in terms imposed without due process of law. An unfair and unwarranted classification of and discrimination against lessees of space who use in their business and affairs safe deposit boxes, and those who place their property in storage in other and less safe ways, is arbitrarily made by the law. This imposes upon the business of plaintiff in error an additional ground of complaint.

In a like manner the law seeks to restrain the delivery of capital stock "or other interests in" the safe deposit company, by the company to personal representatives or to surviving joint box renters. (Trans., 32.)

This means clearly that certificates of shares of stock in the company, if in the box, must not be delivered to personal representatives, any more than any other securities that happen to be in the box, without observing the requirements of the act. That ties up the interest of a joint holder of a safe deposit stock certificate, unconstitutionally, and strikes at the business of safety deposit.

As this stock is included by the terms of the act in the "securities" supposed to be in possession and under control of the company, it is also plain that a stock transfer of a decedent's stock, or of a surviving joint owner's stock, cannot be made upon the books of the company without the interference contemplated by the act—a further unconstitutional infringement upon individual property rights.

The language of the act includes the words "other interests"—which can mean nothing but that the payment of dividends on safe deposit stocks is to be withheld and denied in a like manner to personal representatives of deceased stockholders, as well as to surviving joint stockholders on the stock belonging to them—which is a clear infraction of the constitutional prohibitions against interference with liberty and property. And where dividends have been earned and declared *after* the death of the stockholder, any construction of the act that would withhold *such* dividends from distribution to anyone entitled to them is too absurd for argument.

(4) THE LAW IS UNCONSTITUTIONAL IF MADE TO EXTEND TO BOXES HELD BY BUSINESS CO-PARTNERSHIPS.

The complaint here, however, does not rest wholly on the unconstitutionality of the language of the act

as we have heretofore suggested. It is claimed by the Attorney General and so alleged in the bill (Trans., 32, 33) that the provisions of Section 9 extend beyond the language employed by the act, to the extent that the words "joint names of a decedent and one or more persons" and "survivor or survivors" are to be taken to include *partnership* relations. In other words, that the provision of the law as to joint box-renters and their survivors is to be extended to include boxes held by commercial partnerships with all the incidents and inconveniences that are attendant on the death of a joint box renter. This is done by a forced and unnecessary interpretation of the act by the Attorney General and adopted by the court below and makes the act unconstitutional and an infringement of the rights of plaintiff in error in its effect.

The repository of state power, by abuse of authority, becomes subject to the Fourteenth Amendment.

> *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S., 278.
>
> *Raymond* v. *Chicago Traction Co.*, 207 U. S., 20, 35.
>
> *Chicago, B. & Q. Ry.* v. *Chicago*, 166 U. S., 233.

Now it is alleged in the bill (Trans., 29) that approximately 317 of the complainant's 9,702 rented boxes are rented by business co-partnerships, and that the word "joint" wherever used in Section 9 is intended to refer to joint renters or owners or depositors who are not partners and to them only. (Trans., 34.)

In the case of partnerships, a manifestly different situation from that of joint renters presents itself. A partnership box is not a box standing in joint names. The property left behind in a safe deposit box on the death of a partner is not any part of the property of the deceased partner. Nothing is the individual property of a partner until his interest has been determined after the liquidation of the partnership affairs. Until such time arrives, the assets belong to the firm as such. This is the settled law of Illinois and many other jurisdictions.

A. A COMMERCIAL PARTNERSHIP IS A LEGAL ENTITY.

A partnership is a legal entity. As is said in 30 Cyc., 423:

> "The law does take note on a wide scale of partnership as a legal entity, and regards it as a unit both of rights and obligations, and there is a general tendency at this day to complete the recognition of a partnership as a body of itself, with its own means appointed to its own debts."

In *Menagh* v. *Whitwell,* 52 N. Y., 146, the theory is well worked out.

Also in

Drucker v. *Wellhouse,* 82 Ga., 129.
Richards v. *Leveille,* 44 Nebraska, 38, 43.
Roop v. *Herron,* 15 Neb., 80.
Curtis v. *Hollinshead,* 14 N. J. L., 402, 410.
In re Meyer, 98 Fed. Rep., 976.
In re Sanderlin, 109 Fed. Rep., 857.

B. THE EFFECT OF THIS ENTITY IS THAT WHILE DEATH DISSOLVES THE PARTNERSHIP AS TO THE FUTURE, IT STILL CONTINUES AS AN ENTITY FOR THE PURPOSE OF SETTLING ITS OLD AFFAIRS, AND THE RIGHT OF THE SURVIVING PARTNER TO THE EXCLUSIVE CONTROL OF THE PARTNERSHIP PROPERTY IS WELL SETTLED.

In *Bank of Montreal* v. *Page*, 98 Ill., 109, at page 120, the court said:

> "It is true that after dissolution, a 'kind of community of interest, of power and of liability,' as between the original partners, continues,—Parsons on Partnership (1st Ed.), 380—but this is only for the purpose of closing or 'winding up' the affairs of the partnership. In the absence of stipulation to the contrary, in case of dissolution, every partner is left in possession of 'the full power to pay and collect debts due to the partnership; to apply the partnership funds and effects to the discharge of their own debts; to adjust and settle the unliquidated debts of the partnership; to receive any property belonging to the partnership; and to make due acquittances, discharges, receipts and acknowledgments of their acts in the premises.' Story on Partnership, Sec. 328; Collyer on Partnership (4th Am. Ed.), Sec. 546. See, also, *Heartt* v. *Walsh*, 75 Ill., 200; *Gordon* v. *Freeman*, 11 *Id.*, 14; *Major* v. *Hawkes*, 12 *Id.*, 297; *Granger* v. *McGilvra*, 24 *Id.*, 152.
>
> "The dissolution does not revoke the authority to arrange, liquidate, settle and pay debts already created, but it operates as a revocation of all authority for making new contracts."

In *Maynard* v. *Richards*, 166 Ill., 466, 477, this court also said:

> "It is true, that the death of Maynard terminated the partnership between him and Richards; but a community of interests still con-

tinued to exist between Richards, as surviving partner, and the representatives of Maynard, the deceased partner, notwithstanding the dissolution. The partnership continued to have a limited existence for the purpose of settling and winding up the affairs of the parnership. (*Nelson* v. *Hayner*, 66 Ill., 487.)"

This is the undoubted rule in other jurisdictions as well.

Gannett v. *Cunningham*, 34 Me., 56, 62.
Davis v. *Megroz*, 55 N. J. L., 427, 431.
Brown v. *Higginbotham*, 5 Leigh (Va.), 583, 588.

There is no disposition manifested by the Illinois court in the opinion in the case at bar to depart from this rule.

C. UNTIL THE PAYMENT OF FIRM LIABILITIES, THE RIGHT OF POSSESSION AND CONTROL OF THE SURVIVING PARTNER IS EXCLUSIVE, EVEN OF THE ADMINISTRATOR.

It follows clearly that the administrator, or the estate of the deceased partner, has nothing whatever to do with the partnership assets, until a payment of all firm liabilities and a determination of the dead partner's distributive share. The right to the control of the partnership box, and to the custody of the partnership assets therein contained remain absolutely and exclusively in the surviving partner.

In *Miller et al.* v. *Jones*, 39 Ill., 54, at page 60, it was said:

"The law governing the relations of the administrator of a deceased partner to the surviving partners, so far as concerns any ques-

tions involved in this case, is well settled. Primarily the administrator has nothing to do with either the partnership assets or the partnership debts. The surviving partners take the exclusive legal title to the former for the payment of the latter. If any assets remain in their hands after payment for all liabilities, they should account to the administrator for the distributive share of the deceased, which then becomes, for the first time, assets in his hands as administrator."

To same effect are:

Commercial Bank v. *Proctor,* 98 Ill., 558; 30 Cyc., 659.

The provisions of Sections 86, 87 and 88 of Chapter 3, on Administration, Hurd's Revised Statutes, 1912, recognize and establish this right to the full, fixing the duties of the surviving partner as to inventory, and account, the collection of assets, and the turning over the ultimate balance due to the administrator.

It becomes very plain, therefore, that the claim of the defendants in error that a safe deposit company under this act, must interfere with and exercise control over the contents of a partnership box after the death of a partner, and that defendants in error, as inheritance tax officials, have the right of inspection of the contents of such a box, is directly opposed to all legal principles and is an invasion of the constitutional rights of contract, of liberty and of property.

It is easy to see its far-reaching and disastrous effect in a typical instance. A and B are a firm of bankers and brokers, renting a safe deposit box, in

which are not only their own securities, imperatively demanded on a moment's notice to keep going their business life, but also the securities deposited with them of their customers. A suddenly dies. The business cannot stop, or instant ruin would ensue. Theoretically the firm is *eo instanti* dissolved. Practically and legally its business must and does continue. Until it is wound up, the surviving partner must act in its liquidation and winding up. But it cannot continue without immediate access to its safe deposit box. The securities belonging to the firm, and belonging to its customers, must be reached and delivered to carry out contracts already entered into, or default, damage to others, and possible bankruptcy would follow. And yet this law, as interpreted by the officials, *requires* under severe penalty the safe deposit company to deny access to the surviving partner for ten days, to allow the tax officials to inspect the contents of the box, and to exercise a possession and control over third person's affairs that is as unconstitutional as it is intolerable in practice.

D. In treating this question, the State Supreme Court in their majority opinion say (Trans., 53):

> "A more difficult question is presented when the safety deposit box or safe has been leased by a co-partnership and one member of the co-partnership has died, leaving co-partnership property remaining in such safety deposit box or safe. We think, however, if it be borne in mind that the co-partnership by the death of a co-partner is dissolved and that while the assets may be lawfully retained by the surviving member or surviving members of the co-partnership, they ultimately must account to the personal

representatives of the deceased partner for his share, and that the inheritance tax will only be assessed upon the succession to what may remain after the partnership debts are paid, it must be held that the statute applies to a co-partnership lease and to co-partnership assets."

There would seem to be here a complete *non-sequitur* in the conclusion of the foregoing statement, for the reason, as is last urged, that if the surviving partners are entitled to the possession of the partnership assets for the purposes stated and must ultimately account to the estate of the deceased partner, then they, and not the safe deposit companies, are the "person or persons having in their custody or control securities," etc., belonging to a decedent, and must be held responsible for the ascertainment of the tax as the act provides *"at the time of the delivery or transfer"* to the personal representatives of the decedent. In other words, it is because the general law, and the established law of this state, gives this custody and control to surviving partners that the statute should *not* apply to a co-partnership lease and to co-partnership assets. It can only so apply by infringing the constitutional rights of the safe deposit company.

The sum and substance of the matter is that the State Supreme Court, while asserting that the established law of partnership survivorship is what it is, have in fact subverted that law in order to hold that the Attorney General's interpolation of "partnership-boxes" into the act is justified. As it is unconstitutional as to joint box renters, as we have sought to show, so it is equally unconstitutional as to

partnership box renters. It deprives the surviving partners of liberty, of property, without due process. It denies to surviving partners, who have firm assets in safe deposit boxes, the equal protection of the laws. It causes disaffection with the safety deposit business on the part of this class of customers and so deprives plaintiff in error of liberty and the right of contract and impairs the obligation of its contract.

VI.

THAT THE PURPOSE OF THE ACT IS TO EFFECTUATE THE ASCERTAINMENT AND COLLECTION OF A TAX, DOES NOT JUSTIFY ITS SUMMARY DISREGARD OF CONSTITUTIONAL RIGHTS.

Somewhat more summary remedies are doubtless permitted in the assessing of taxes than in other official inquiries. But in such case the constitutional safeguards are not to be entirely disregarded. In the act complained of, the inheritance tax officials are vested with power of inquiry, without notice of any kind to the true owner or anyone, to determine (1) To whom the property in the box belongs, (2) To whom it is to descend, (3) The value of the property, and (4) Whether or not it is subject to the tax. The act contemplates decision by *someone*, on these points, even if it assumes powers of foretelling the future in that person, as to what may be "the sufficient portion or amount" necessary "to pay any tax or interest which may thereafter be assessed." If it is not the inheritance tax officials, it is the safe deposit company. Neither possesses judicial functions. They may be meddling with property not concerned with the tax at all, and yet they must make

these judicial determinations at their peril and under penalty.

EXTREME DEPARTURES FROM LAW AND JUSTICE NOT PERMITTED EVEN IN THE CASE OF TAX COLLECTION.

The mere fact that it is a form of taxation does not justify this extreme departure from law and justice.

In *Turpin* v. *Lemon*, 187 U. S., 51, at 58, the court quotes with approval from *Hagar* v. *Reclamation Dist.*, 111 U. S., 701, as to what due process of law means in connection with the assessment and collection of taxes:

> "The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

Again, Mr. Justice Brown, speaking for the court, page 60:

> "Under the Fourteenth Amendment the Legislature is bound to provide a method for the assessment and collection of taxes that shall *not be inconsistent with natural justice.*"

The power to tax, the exercise of that power, however convenient the method adopted may be for those entrusted with the ascertainment and collection of the tax, is always subject to the rights secured by the Constitution. As this court said in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 563:

> "The power to tax is so far limited that it cannot be used to impair or destroy rights that

> are given or secured by the supreme law of the land."

ALL PROCESS OF LAW IS DISPENSED WITH IN THIS ACT.

We contend such a situation arises here. It is the *nature* of the interference with constitutional rights imposed by the act complained of that makes it so obnoxious and burdensome, not the amount involved in the payment of the actual tax.

The position of the Attorney General, that while perhaps the law contains a possibility of injustice, one must rely on his wise and benevolent exercise of the despotic power placed in his hands, somehow fails to satisfy.

THE CITIZEN, BE HE INDIVIDUAL OR CORPORATION, MUST BE PROTECTED FROM THE ARBITRARY ACTION OF GOVERNMENT.

In concluding this argument we can do no better than quote the language of Mr. Justice Moody in *Twining* v. *New Jersey*, 211 U. S., 101:

> "Consistently with the requirements of due process, no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which have relation to process of law and protect the citizen in his private right and guard him against *the arbitrary action of government.*"

Because of the conflict of this Section 9, as construed by the state Supreme Court, with the contract clause of the Constitution, and because of the open question of general law involved, we have laid much stress throughout this argument on the proper construction of the peculiar business of safety de-

posit. The misconception of the state Supreme Court in this connection as to the rights of the plaintiff in error, that are by Section 9 impaired, lies at the foundation of the reasoning of the court in arriving at its conclusion that Section 9 is in harmony with the provisions of the Federal Constitution. We are very confident that a proper analysis and construction of the "business of safety deposit" will lead to a different conclusion as to the constitutionality of the act.

Respectfully submitted.

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JOHN S. MILLER,
Of Counsel.

DEC 8 1913
JAMES D. MAHER
CLERK

22961.

IN THE

Supreme Court

OF THE

UNITED STATES.

October Term, A. D. 1913.

No. 138.

NATIONAL SAFE DEPOSIT COMPANY,
Plaintiff in Error,

v.

WILLIAM H. STRAD, ATTORNEY GENERAL OF THE STATE OF ILLINOIS; ANDREW RUSSELL, STATE TREASURER OF THE STATE OF ILLINOIS, AND WALTER K. LINCOLN, INHERITANCE TAX ATTORNEY,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

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Of Counsel

Journal Co., Printers, Springfield, Illinois.

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NATIONAL SAFE DEPOSIT COMPANY, *Plaintiff in Error,* v. WILLIAM H. STEAD, ATTORNEY GENERAL OF THE STATE OF ILLINOIS; ANDREW RUSSELL, STATE TREASURER OF THE STATE OF ILLINOIS, AND WALTER K. LINCOLN, INHERITANCE TAX ATTORNEY, *Defendants in Error.*	*In Error to the Supreme Court of the State of Illinois.*

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

BRIEF.

CHARTER RIGHTS OF PLAINTIFF IN ERROR.

The charter rights of plaintiff in error are qualified and limited by section 9 of the general Incorporation act then in force, which provided that the General Assembly

shall at all times have power to prescribe such regulations and provisions for corporations formed under the act as it may deem advisable.

City of Danville v. *Danville Water Co.*, 178 Ill., 299, 306-7;

Freeport Water Co. v. *Freeport City*, 180 U. S., 587, 596;

Union Traction Co. v. *City of Chicago*, 199 Ill., 484, 538;

The People v. *Rose*, 207 Ill., 352;

White Sewing Machine Co. v. *Harris*, 252 Ill., 361.

THE SUPREME COURT OF THE UNITED STATES WILL FOLLOW THE CONSTRUCTION PLACED UPON SUCH A STATUTE BY THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Supreme Court of the United States has frequently expressed itself as being bound by the construction put by the highest court of a state upon its own statutes, reserving the right to amend or repeal charters.

Covington v. *Kentucky*, 173 U. S., 231, 237-9; and cases cited.

THE SAFE DEPOSIT COMPANY IS IN THE POSITION OF A BAILER FOR HIRE.

As the Safe Deposit Company has the possession and control of its building and its vault and also of its safety deposit boxes and safes by virtue of a master key, without which access to the contents of the box or safe cannot be

had, it sustains to its customer the relation of a bailee or depository for hire.

National Safety Deposit Co. v. *Stead, et al.*, 250 Ill., 584;

Mayer v. *Bransinger*, 180 Ill., 110;

Lockwood v. *Manhattan Storage & Warehouse Co.*, 50 N. Y. Supp., 974;

Cussen v. *Southern California Savings Bank*, 133 Cal., 534;

Roberts v. *Safe Deposit Co.*, 123 N. Y., 57;

Safe Deposit Co. v. *Pollock*, 85 Pa. St., 391.

SECTION 9 OF THE ILLINOIS INHERITANCE TAX ACTS DOES NOT MAKE THE SAFE DEPOSIT COMPANY AN INVOLUNTARY TAX COLLECTOR.

The act does not provide that the company shall ascertain and pay the tax, but in many instances corporations have been made collecting officers by being required to deduct the tax from the stockholders' interest and pay it to the State and such acts were sustained.

Carstairs v. *Cochran*, 193 U. S., 10;

U. S. v. *B. & O. R. Co.*, 84 U. S., 322;

National Bank v. *Commonwealth*, 76 U. S., 353;

Citizens National Bank v. *Ky.*, 217 U. S., 443;

2 Cooley on Taxation, (3d ed.) 832.

Statutes have frequently required agents to return for taxation property in their possession, and made such agents liable for the tax if they surrender the property without the tax thereon being paid.

Walton v. *Westwood*, 73 Ill., 125;

Ottawa Glass Co. v. *McCabe*, 81 Ill., 556;

Lockwood v. *Johnson*, 106 Ill., 334.

THE RIGHT TO TAKE PROPERTY BY DESCENT OR WILL IS WHOLLY STATUTORY.

The right to take property, either real or personal, by inheritance or by bequest or devise is purely a statutory right and one which rests wholly within legislative enactment, and the State, acting in its sovereign capacity, by appropriate legislation, may regulate and control the devolution of property after the death of the owner.

National Safe Deposit Co. v. *Stead, et al.*, 250 Ill., 584, 596;

Kochersperger v. *Drake*, 167 Ill., 122;

In re Estate of Speed, 216 Ill., 23;

In re Petition of Mulfords, 217 Ill., 242;

In re Estate of Graves, 242 Ill., 212;

Magoun v. *Ill. Tr. & Sav. Bank*, 170 U. S., 283.

THE STATE HAS A VESTED INTEREST.

Where there is a succession tax due the State, the State has a vested interest.

National Safe Deposit Co. v. *Stead, et al.*, 250 Ill., 584, 597;

In re Estate of Stanford, 126 Cal., 112;

In re Estate of Graves, 242 Ill., 212;

Magoun v. *Ill. Tr. & Sav. Bank*, 170 U. S., 283.

AS TO CONTRACTS MADE AFTER THE ACT COMPLAINED OF WAS PASSED, IT CANNOT BE URGED THAT THE ACT IS CONTRARY TO SECTION 10, ARTICLE I OF THE FEDERAL CONSTITUTION PROVIDING THAT NO STATE SHALL PASS ANY LAW IMPAIRING THE OBLIGATION OF CONTRACTS.

Lehigh Water Co. v. *Easton,* 121 U. S., 388;

Blackstone v. *Miller,* 188 U. S., 189.

INSPECTION HAS ALWAYS BEEN PERMITTED.

The Succession Duty act of England of 1853 provided for it.

16 & 17 Vict. c. 51, sec. 49;

Norman's Digest of Death Duties, (3d ed.) 174.

The English Finance act of 1894, section 8, provided for it.

Norman's Digest of Death Duties, (3d ed.) 2.

The Illinois Administration act of 1845, entitled "Wills" provided for it.

Revised Statutes of Illinois, 1845, chap. 109, par. 90, p. 556.

The Illinois act of 1869, in regard to the rights and duties of surviving partners, provided for it.

Hurd's Revised Statutes, 1912, chap. 3, pars. 86-9, pp. 25-6.

THE UNREASONABLE SEARCH AND SEIZURE PROVISION OF THE FOURTH AMENDMENT DOES NOT PREVENT A STATE FROM ADOPTING EFFECTUAL MEANS TO COLLECT A TAX WHICH IT HAS IMPOSED.

Flint v. *Tracy Stone Co.*, 220 U. S., 107, 176.

The fourth amendment does not prohibit the issuing of process to require attendance and testimony of witnesses and the production of books and papers.

Interstate Commerce Commission v. *Brimson*, 154 U. S., 447;

Interstate Commerce Commission v. *Baird*, 194 U. S., 25.

The fourth amendment does not prohibit providing for the inspection and surveying of a mine in the possession of another.

Montana Co. v. *St. Louis Mining Co.*, 152 U. S., 161.

DUE PROCESS OF LAW.

Any legal procedure enforced by public authority whether sanctioned by age and custom or newly devised in the discretion of the Legislature in furtherance of the general public good must be held to be due process of law.

Hurtado v. *California*, 110 U. S., 537;

Davidson v. *New Orleans*, 96 U. S., 97;

Flint v. *Tracy Stone Co.*, 220 U. S., 107.

The mere temporary invasion of one's possession to determine a right is not the taking of property without due process of law.

Montana Co. v. *St. Louis Mining Co.*, 152 U. S., 161.

The liberty of contract guaranteed by the Court against deprivation without due process of law is the liberty of natural and not artificial persons.

Western Turf Assn. v. *Greenberg*, 204 U. S., 359, 363;

Northwestern Life Ins. Co. v. *Riggs*, 203 U. S., 243, 255.

ARGUMENT.

This is a writ of error to the Supreme Court of the State of Illinois to reverse a judgment of that Court holding that the provisions of section 9 of the Illinois Act to tax gifts, legacies, inheritances, transfers etc., are constitutional. Judgment was rendered on a second amended bill filed October 29, 1910, by the National Safe Deposit Company, plaintiff in error, against the persons occupying the state offices of Attorney General and State Treasurer, the occupants of said offices having changed pending the litigation. The bill was filed on behalf of plaintiff in error and all other corporations, firms and individuals similarly situated, to restrain said officers from enforcing the provisions of said section 9. A general demurrer was sustained to the bill and the bill was dismissed for want of equity, and this judgment was affirmed by the Supreme Court of the State of Illinois.

The grounds of demurrer and of this writ of error are briefly stated in the bill of complaint as follows:

> "That said section 9 * * * is in violation of Article 1, Section 10, of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of contracts; and of Article IV of the amendments to the said Constitution, providing that the right of the People to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and of section 1 of Article XIV of the amendments to said Constitution, providing that no

State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

I.

SECTION 9 AS APPLICABLE WHERE DECEDENT WAS THE SOLE RENTER OF A SAFETY DEPOSIT BOX.

The Supreme Court of the State of Illinois, in its opinion in this case, considered section 9 of the Inheritance Tax Law, first, as applied to the case where the deceased was the renter of a safety deposit box, being the sole and only renter of that box; second, where the deceased was the joint renter of a box; third, where the deceased was a member of a firm or co-partnership which rented the box.

The same order will be observed in this argument as tending to simplicity and orderliness. Therefore, what is said under the first division of this argument is said with reference to the case where the deceased was the sole renter and occupant of the safety deposit box.

References to the record by page number refer to the printed record.

A.

Section 9 is not in violation of Article I, Section 10, of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of contracts.

The declarations mentions two contracts, (1) the articles of incorporation of plaintiff in error, and (2) the

contract between the company and the renter of a safety deposit box. We assume that the declaration intends to charge that section 9 of the Inheritance or Transfer Tax Law of Illinois (Hurd's Revised Statutes, chap. 120, par. 366) impairs the obligation of both contracts.

(1)

Section 9 does not impair the obligation of the contract of the Safe Deposit Company with the State.

(a)

The declaration is not sufficient to maintain such a claim because the contract is not set forth.

The contract with the renter of a box is set forth and is evidently the contract the impairment of which is relied upon. All that is alleged in regard to the charter is

> "that it was duly incorporated on or about the year 1881 for the express purpose of providing a suitable building or buildings with vaults and safes with a special regard to protection against loss by fire, robbery, or otherwise, and to carry on the business of safety deposit and storage." (Rec., 28.)

This is not a sufficient statement of a contract with the State to raise the question of impairment. The charter may have expressly provided for the provisions of section 9 so far as the Court is advised. But, in any event, section 9 does not prohibit the carrying on of the business of safety deposit and storage.

(b)

The charter of plaintiff in error was qualified and limited by the right of the General Assembly, at all times, to prescribe such regulations and provisions as it might deem advisable.

If the charter was in the words of the declaration "to carry on the business of safety deposit and storage," and contained no other power, limitation or qualification, section 9 cannot be held to be an impairment.

The declaration avers that the Safe Deposit Company was incorporated in 1881. The Constitution of Illinois prohibits special charters. It must have been incorporated under the general Incorporation Act then in force which was the act of 1872. Paragraph 9 of the act of 1872 is as follows:

> "The General Assembly shall, at all times, have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act: *And, provided, further,* that this act shall not be held to revive or extend any private charter ar law heretofore granted or passed concerning any corporation."

This section has been construed a number of times. In *City of Danville* v. *Danville Water Company,* 178 Ill., 299, the Court held that by organizing under the general Incorporation Act, a corporation agrees to submit itself to such regulations and provisions as the Legislature may deem it advisable to make under section 9 of such act; that the language of section 9 is broader in its scope than

the language of many charters which reserve to the State the power to repeal,, amend or modify the charter itself; that the right to regulate is broader than the right to change, and that

> "the authority is thereby reserved to provide the regulations and provisions under which the corporation may proceed in the transaction of its business." (pages 306-7.)

In *Freeport Water Company* v. *Freeport City,* 180 U. S., 587, this Court had under consideration both section 9 of the general Incorporation Act and section 10 Article I of the Federal Constitution, and said that where the law had not been settled, it is the duty of the Federal courts to exercise their own judgment; but for the sake of harmony the Federal courts will lean toward an agreement of views with the State courts. The Court further said that the Water Company, incorporated in August, 1882, was incorporated under the general Incorporation Act of 1872, section 9 of which

> "reserves to the General Assembly the power to prescribe in the government of corporations 'such regulations and provisions as it may deem advisable.' The language is very comprehensive. Regarding it alone, it is difficult to conceive what objects of legislation are not covered by it. The Supreme Court of the State has construed it to be of greater import than the usual reservation of the power to alter and amend the charters of corporation." (page 596.)

The case arose over the power of the city to regulate water rates and the power was upheld.

In *Union Traction Company* v. *City of Chicago*, 199 Ill., 484 the Court said that when the Constitution of 1870 was adopted the State determined to adopt a new policy and compel corporations created by the State to remain and be subject to the control of the People, speaking through their law-making power, and provided in section 9 of the general incorporation Act that the General Assembly should at all times have power to prescribe such regulations and provisions as it may deem advisable. (page 538.)

The Court speaks of the construction placed upon section 9 in the *Danville* case and says that these views of its broad provisions are endorsed by the Supreme Court of the United States in *Freeport Water Co.* v. *Freeport City*, 180 U. S., 596 (page 540).

The same views were expressed in *People* v. *Rose*, 207 Ill., 352, where a corporation incorporated in 1900 was held bound by the act of 1901 requiring corporations to make annual reports, accompanied by a fee, to the Secretary of State; and in *White Sewing Machine Co.* v. *Harris*, 252 Ill., 361, where section 9 was held to authorize a statute adding new requirement affecting foreign corporations.

Plaintiff in error is an Illinois corporation and is bound by section 9 of the general Incorporation Act and the construction placed upon that act by the Supreme Court of Illinois and by the Supreme Court of the United

States. The latter Court has said it was bound by the construction of such a statute placed upon it by the highest Court of the State of its enactment. *Covington v. Kentucky*, 173 U. S., 231.

It, therefore, appears beyond controversy that the Safe Deposit Company, as a part of its articles of incorporation, agreed that the General Assembly might at any time prescribe the regulations and provisions under which it must proceed in the transaction of its business. The General Assembly merely exercised this reserved right when it passed section 9 of the Inheritance tax law, and therefore did not impair or even change the articles of incorporation of plaintiff in error.

(c)

The duties imposed on the Safe Deposit Company are such as may be imposed upon any corporation having the physical possession or control of property.

We have endeavored to show that the company took its charter with the understanding that the State reserved the right to regulate the conduct of its business, and that the duties imposed by section 9 of the Inheritance tax act were no more than provided for by section 9 of the general Incorporation act.

Aside from this reservation by statute, the duties imposed in case of death of the owner of property in the physical possession of a safe deposit company are no greater than might be imposed on any bailee for hire.

The business of plaintiff in error as stated in its charter is "to carry on the business of safety deposit and storage." This is a very old and well known form of bailment, but it is claimed that under the modern methods and rules adopted, new conditions have arisen that are not found in the old bailment cases. We deem it immaterial whether this business comes strictly within the old definitions or forms a new kind of bailment. In either case, the Safe Deposit company has the actual possession and control and, upon the death of a customer, can and does deliver the contents of a safety deposit box to whom it pleases. By having its own building and vaults, it can give or deny access to its deposit boxes or safes, and by retaining the master key, it can deny access to the boxes. It may and does remove locks, at times, and delivers the contents of boxes and safes to people who have no key. It searches boxes and safes for wills and delivers wills, when so found, to the clerk of the Probate Court.

It, therefore, follows that it has actual possession and control of the papers of its customers and that no duties are imposed which are of a different character than those which it already exercised.

The care required of such a custodian has always been held to be such care as is required of a bailee for hire, and the courts say that the relation is "that of a bailee or depository for hire." (*National Safe Deposit Co.* v. *Stead*, 250 Ill., 584, and cases cited.)

Counsel for plaintiff in error cites to the contrary *People* v. *Mercantile Safe Deposit Co.*, App. Div. of Sup. Ct. of N. Y., (Nov., 1913) opinion published in N. Y. Law Journal, November 20, 1913.

Section 227 of the N. Y. Transfer Tax law is similar to section 9 of the Illinois law. It provided a penalty of the amount of the tax and interest thereon, and not less than $5,000 nor more than $25,000 for a failure to serve notice, or to allow the examination, and for a failure to retain sufficient of the assets to pay the tax.

The comptroller brought an action against the Safe Deposit company to recover the penalty. The facts were that the Mercantile Safe Deposit Company rented a safe to Russell Sage and to Charles W. Osborne, who were severally to have access to the same, that Sage never visited the safe but that Orborne constantly used it, putting in and taking out securities. After the death of Sage, Osborne continued to use the safe as before. The Safe Deposit company gave no notice of the death of Sage, but a representative of the comptroller visited the safe in company with a representative of the Sage estate, and examined the contents, and the tax was fixed and fully paid. The Safe Deposit company had no key to the safe and no control other than that of admission to the vault.

The court held that the statute did not cover the situation as the company had no possession or control within the meaning of the statute. It had no master key. The court did not hold that section 227 was unconstitu-

tional, but, on the contrary, decided the case on the theory that it was constitutional but did not apply to the case at bar.

Upon the question now being considered, the New York case of *Lockwood* v. *Manhattan Storage & Warehouse Co.*, 50 N. Y. Supp., 974, is in point. This company maintained at its warehouse safe deposit vaults, containing separate boxes or safes, one key being held by the renter and the master key being held by the company; access to the box could be gained only by the use of both keys. The court held that the company was a bailee for hire because it was in possession of its customers' property and absolutely controlled the renters' access.

To the same effect are the other cases mentioned in our brief. In any event, the company can deny access to all, whether rightfully or wrongfully, and in that sense has possession and control of the contents of the boxes, and therefore is liable to the duties imposed by reason of such possession and control.

(d)

Section 9 of the Inheritance tax act does not make the Safe Deposit Company an involuntary tax collector.

It does not provide that the company shall ascertain and pay the tax. It, like the New York act, merely provides that failure to give notice or allow examination, or retain a sufficient portion to pay the tax and interest, shall render the company liable to a penalty, which is the

amount of tax and interest, and also $1,000. The tax and interest is merely a part of the penalty, the same as the $1,000. It can be avoided by a simple notice. It is not an unreasonable revenue measure.

Even if the duty of paying the tax had been imposed upon the company, it would only be such a revenue measure as we are familiar with in collecting taxes at their source, or from persons in possession of personal property. A State may tax private property having a situs within its territorial limits and may require the party in possession to pay the taxes thereon, and it makes no difference whether the owner is a resident of the State or not. *Carstairs* v. *Cochran*, 193 U. S., 10. But section 9 does not impose the duty of paying the tax.

(2)

Section 9 does not impair the obligation of the contract between the Safe Deposit company and its customer.

This contract is set out in full in the declaration (Rec., 28). Omitting the rules and limitations of the liability of the Safe Deposit company, it reads,

> "Received of.....dollars, for rent of safe No. .... in the vaults of this company, for the term of one year from the .... day of .....191.."

(a)

This contract is not impaired by section 9 wherein it requires the Safe Deposit company, upon the death of the renter of a box to give notice of the time when it will deliver the contents of the box to the legal representative of decedent, and authorizes the representative of the State to examine said contents.

Death changed the ownership of said contents, and the laws of Illinois created new ownership and a vested right in the State to a part of the estate.

The Federal constitution does not limit the power of a state to regulate the laws of descent and devise, and the right to dispose of property by will has always been considered within legislative control.

Prior to the Statute of Wills, the common law of England did not permit the owner of land to make a testamentary disposition of his real estate at all and only permitted him to bequeath one-third of his personal property to whom he pleased.

Chapter 28 of Hurd's Revised Statutes of Illinois declares that the common law of England and all statutes of a general nature made prior to the fourth year of James I shall be the rule of decision and shall be considered as of full force until repealed by legislative authority.

Chapter 39 of the same statutes, entitled, "An Act in regard to the descent of property," and chapter 148, entitled, "An Act in regards to wills," repealed the common law in reference to inheritance and, also, repealed the

statutes enacted prior to the fourth year of James I in reference to devises. *Kochersperger* v. *Drake*, 167 Ill., 122.

The laws of descent and the right to devise and to take under a will within the State of Illinois depend upon and owe their existence to the statute law of the State. The right to inherit and the right to devise being dependent on legislative acts, there is nothing in the Constitution of the State which prohibits the change of the law with reference to those subjects at the discretion of the law-making power. The laws of descent and devise being the creation of statute law, the power which creates may regulate and may impose conditions or burdens on the right of succession or ownership of property to which there has ceased to be an owner because of death and the ownership of which the State then provides for by the law of descent or devise. At death, the former ownership has ceased and a new ownership has come into being, created by the statute law. It vests at the death of the owner.

The statute may provide that the heir shall be vested with a certain part of the estate and that the State itself shall be vested with a certain other part. The statute may provide that the right of the heir to a certain part of the estate shall be subject to the provision that a percentage of the property so received shall belong to the State or that the heir shall pay a percentage for the right of inheritance. Such acts have been known by various names,

such as, Death Duties, Inheritance Tax, Succession Tax, Transfer Tax, etc.

The right of the State to make and enforce such laws has been recognized from very early times. They were recognized by the Roman law. They were adopted in England in 1780. They were adopted in Pennsylvania in 1826; and have since been adopted in most of the states and no collateral inheritance tax has been held to impair any contract right under any circumstances. Blakemore and Bancroft on Inheritance Taxes, page 40, section 45a.

(b)

When there is a succession tax due to the State, the State has a vested interest and is therefore as much entitled to know the contents of the safety deposit box as the heir.

Upon the death of decedent, the right of the State becomes fixed and determinable. It cannot be changed by any act of the heirs or devisees. No settlement, compromise, agreement or transfer between them can affect the right of the State or the amount of the succession tax due it, any more than such an agreement or settlement could affect the right of an heir or devisee who was not a party to it. The right of the State and the right of an heir or devisee are equally fixed and vested by the death of the owner of the estate. The State has as constitutional a right as the heir or devisee or legal representative to examine and know what belongs to the estate.

A case directly in point is *In Re Stanford's Estate*, 126 Cal., 112. Counsel for plaintiff in error say, "If an

inheritance tax were a direct tax on property as in California, the inference might perhaps be drawn," i. e., that the State had a vested interest in the estate, but counsel affirm that the Stanford case was decided under the California act of 1903, which imposed a tax on *"all property* which shall pass by will," etc., whereas the Illinois act of 1909 imposed the tax on *"the transfer"* of property. The argument is that in order to make the right of the State a vested one, the tax must be on the property, and not upon the right of succession, and that the Stanford case held that the State had a vested right because the California act imposed the tax on property. This contention cannot be maintained. The California act of March 23, 1893, was in the same words as the New York act of 1825, then in force. Before the passage of the California act, the court of last resort in New York had construed the New York act to impose a tax on the right of succession and not on property. (*In re Swift*, 137 N. Y., 77, 88.) Therefore, it must be assumed as a matter of law that the California legislature adopted the New York act as construed by the New York Court of Appeals, and that it imposes a tax on the right of succession.

In re Wilmerding, 117 Cal., 281, the Supreme Court of California held that the act of 1893 was not a tax upon property and said,

> "As this tax is not upon property but upon the right of succession, the constitutional provision that all property shall be taxed according to its value is inapplicable."

In the Stanford case, the court not only held that the State had a vested interest but also held that the tax was imposed on the right of transfer, and cited the *Wilmerding* case and the *Swift* case.

The Illinois act, like the California act, imposes the tax on the right of transfer or succession and therefore the California case is directly in point.

(c)

The contract cannot be said to be impaired so far as plaintiff in error is concerned, as it has received the entire consideration.

The Safe Deposit company received its entire reward for its services when the contract was made. There is nothing in the contract indicating that any part of this reward is to be returned under any circumstances. The loss claimed is that the law may injure the future business of plaintiff in error. This is not an impairment of the contract.

Moreover any contract made after July 1, 1909, when the law complained of went into effect, was not impaired, as all laws in force are a part of the contract. (*Lehigh Water Co.* v. *Easton*, 121 U. S., 388.)

This amended declaration was filed October 29, 1910, (Rec., 28) more than one year after the law went into effect. As the contracts in question were made for one year, all had expired when the second amended declaration was filed. There was therefore no contract in existence which has been made prior to July 1, 1909, and none which could be impaired by it.

Neither did the second amended declaration allege

that the Safe Deposit company had returned any consideration paid on contracts, or had ever been asked to, or that any breach of any contract made before July 1, 1909, had been claimed by any customer.

The declaration did allege that plaintiff in error fears it will be harrassed by a multiplicity of actions at law as certain customers have threatened suit if it complies with section 9, and that many customers are threatening to withdraw their patronage (Rec., 34-35). This allegation, construed against the pleader, as it should be, refers to contracts made since July 1, 1909, and future patronage.

There is nothing in the contract or in the second amended declaration to show that there was or could be any impairment of any contract made prior to July 1, 1909.

(d)

The delay incident to the enforcement of section 9 is immaterial.

The delay occasioned by section 9 is, at most, ten days. The company can make delivery after ten days' notice. It is authorized to make delivery immediately and without delay upon obtaining the consent of the State Treasurer and Attorney General. This consent is obtained by filing with the Attorney General an affidavit giving information in regard to the deceased and his estate without detail, the most important questions being whether the deceased was a resident or a non-resident, and whether an executor or administrator has been appointed in this State. If there is administration of the assets in this State, the administrator is liable for the tax and the State is thereby reasonably assured of the payment of the tax and the consent is given immediately. These blanks are

in the hands of most banks and safety deposit companies, and in the hands of all who request them to be sent, and consents can ordinarily be obtained within two days.

But the delay of ten days is trivial and nothing as compared with the other delays incident to the settlement of an estate. That such delays are necessary is recognized in all laws with reference to the settlement of estates. It cannot be said to be impairment of contract, as the contract was necessarily made with the knowledge that the renter may die and the safety deposit company may not be able to deliver the contents of the box to the duly authorized executor or administrator for many days after the death of the decedent.

Paragraph 21, chapter 140, Hurd's Revised Statutes of Illinois, provides that before any will shall be admitted to probate, a petition shall be filed with the clerk of the County Court, and he shall send by mail to each of the parties a copy of said petition not less than twenty days prior to the hearing. This involves a greater delay in delivery than section 9 of the Inheritance tax law.

(e)

The obligation of this contract is of the most temporary nature.

The contract of the National Safe Deposit Company is set forth in the bill of complaint. It is in the form of a receipt for one year's rental of a safety deposit box, subject to the rules and regulations printed on the back of the receipt. The renter has paid for one year, but it is obvious

that he may abandon his part of the contract at any time and may remove his deposits and surrender his key at any time.

Rule 5, printed on the back of the receipt, provides that the company may also abandon the contract at any time. It expressly reserves the right to terminate the rental at any time and the renter is thereupon required to withdraw his papers and surrender his key. (Rec., 29.)

Under Rule 6, the company is authorized to open the safe and remove the contents of the box, as is admitted by counsel on pages 10 and 18 of their brief.

Under Rule 7, the company fixes the hours of access and reserves the right of closing vaults upon any holiday or any other day when the manager of the vaults shall deem such closing prudent or proper.

Counsel state that under the contract the next of kin may examine the contents of the box for a will, and that the company files wills left in such boxes in the Probate Court, and that it is immaterial whether the next of kin has the key. (Brief, page 11.)

It will thus be noted that the contract permits the company, not only to hold the contents of the vault more than twenty days until an executor can be appointed, but authorizes the company to open the box and permit the next of kin to make a search of the papers, and, if a will is found, the company takes upon itself the obligation of depositing the will in the Probate Court, all of which

would be as much an impairment of the contract as permitting the State to examine the contents of the box. However, we maintain that no one of these things is an impairment of the contract but that each is a legitimate part of the contract, and the exercise of rights which could be enforced by actions at law.

(f

The matter is now only a moot-case.

The declaration avers that the contracts of plaintiff in error run for one year. All contracts existing at the time the act went into effect must have expired within one year and before the second amended declaration was filed. All contracts made after July 1, 1909, were made with the act in force and therefore the act is a part of the contract and there could be no impairment of the contracts by the act. An act is not in violation of Article I, Section 10, of the Federal constitution, providing that no state shall pass any law impairing the obligation of contracts, when the contract was made after the act was in force. (*Lehigh Water Co.* v. *Easton*, 121 U. S., 388.)

The declaration presents no specific case where a death occurred after July 1, 1909, and the contract was made before that date. Therefore, no injunction can issue according to the prayer of the bill and the matter has become a moot-case of no practical importance.

B.

Section 9 is not in violation of Article IV of the Amendments to the Federal Constitution providing that the right of the people shall be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

There is no provision in the Federal constitution that the right of the People shall be secure in their persons, houses, papers and effects against searches and seizures, but only against *unreasonable* searches and seizures. If a mere examination of papers can be called a search or seizure at all, it is certainly not unreasonable when permitted to be made by a person having an interest therin enforcible by law, and especially by an arm of the government engaged in collecting its revenue. Examination of dockets and papers have always been permitted in the collection of revennes by the government. Such examination as is provided for by section 9 is neither unreasonable nor unusual in the collection of inheritance taxes.

Under the Succession Duty Act of England of 1853 (sec. 49, 16 and 17 Vict c. 51) it was provided that every person who may deliver any account or estimate of property comprised in any succession shall, if required by the commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as he may be capable of, affording any necessary information for the purpose of taxing such property and ascertaining the duty payable thereon. (Norman's Digest of Death Duties,

[3 ed.] 174). So also section 8 of the English Finance Act of 1894 provide for the production of books and documents with penalties provided for failure to produce them. (Norman's Digest of Death Duties [3 ed.] 2.)

Governments do not depend for their revenue upon the statement, even though verified, of the party by whom the tax should be paid. The collection of a revenue under such circumstances would be too precarious. Revenue Acts uniformly provide for examination or the production of books and documents when deemed necessary or material, and such measures are not held to be in violation of a constitutional prohibition of unreasonable search and seizure.

The statutes of the State of Illinois have provided that the tangible personal property of the deceased shall be turned over to his personal representative, subject to the right of examination by the State. The statute might have provided that all the tangible personal property should be turned over to a representative of the State with the privilege of examination by the heirs, devises and legatees. In other words, the personal representative of the estate has no constitutional right to the property but the State might have named its representative as public administrator and settled every estate, turning over to the persons entitled thereto their share of the estate and to the State of Illinois its share.

Under the authorities, there can be no question but what such a statute would not violate the Federal consti-

tution, and, if the State may take entire charge of the assets for distribution without violating any constitutional right, it certainly may examine the assets to determine what the rights of the State are.

The right of examination of the contents of a box can also be predicated upon the interest of the State in the property. The right of the State to a part of the estate vested at the death of the owner and therefore the State as an interested party may demand the right to examine. There can be no unreasonable search and seizure predicated upon an examination by one who has a vested right or interest in the property examined. It makes no difference how small the interest is, or what its quality is.

In *Montana Co.* v. *St. Louis Mining Co.*, 152 U. S., 161, the constitutionality was raised of a statute of Montana which provided that any person having any right to or interest in a mining claim in the possession of another might upon petition get an order to examine and survey the mine in question. The court said that the lesser evil of a temporary invasion of one's possession should yield to the higher good of establishing justice; that courts of equity have inherent power to order inspections of property or the production of books and papers, and if courts have such power, the State must have power to provide a statutory proceeding to accomplish the same result. (Pages 169 and 172.) The court also said that the quality of the right or interest need not be defined, as the amount of interest does not determine the constitutionality of a statute.

Section 9 provides for nothing that the State is not entitled to, and is not in violation of the amendment to the Federal constitution prohibiting unreasonable searches and seizures.

C.

Section 9 is not in violation of section 1 of Article XIV of the Amendments to the Federal Constitution providing that no State shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

(1)

Due Process of Law.

Section 9 does not provide for the taking of property at all, with or without due process of law. It only provides for examination. In *Montana Co.* v. *St. Louis Mining Co.*, 152 U. S., 161, the court held that the mere temporary invasion of one's possession to determine a right was not prohibited by Section 1 of Article XIV of the amendments to the constitution prohibiting the taking of property without due process of law.

Due process of law has received many definitions, depending upon the case to which the principal was applied. In a general way it may be said to mean the exercise of the powers of government according to settled and sanctioned law. It is not necessary that there should be any judicial investigation. Property may be assessed and taxed without any judicial proceeding.

In *Davidson v. New Orleans*, 96 U. S., 97, the court said:

> "That whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections." (Pages 104-5.)

And the court also called attention to the fact that there is a strange misconception of the scope of this provision; that from the character of many cases, and the arguments made therein, the clause was looked upon as a means of bringing to this court the merits of legislation upon which the litigant had been unsuccessful.

The Inheritance tax act of Illinois has been held constitutional both by the Supreme Court of Illinois and the Supreme Court of the United States, and section 9 has been added thereto to give the State notice that a tax may be due to it. The penalty for a failure to comply with section 9 can only be recovered in an ordinary action in a court of law.

If it is seriously claimed that section 9 deprives the Safe Deposit company of its liberty to contract, it may

be answered that the liberty guaranteed by the Constitution against deprivation without due process of law is the liberty of natural and not artificial persons. (*Western Turf Assn.* v. *Greenberg*, 204 U. S., 359, 363.)

The liberty of corporations of Illinois may be invaded by the General Assembly for the good of the State, and such power is reserved to it by statute as we have already seen.

(2)

Section 9 does not deny to any person the equal protection of the laws.

The argument of counsel for plaintiff in error would lead any person to believe that section 9 singled out Safe Deposit companies and imposed the burden only on them. Such is not the fact. Section 9 reads:

> "No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or under control securities, deposits or other assets belonging to or standing in the name of a decedent * * * shall deliver or transfer the same to the executors * * * unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General," etc. (Rec., 31.)

The law applies to everyone having the possession or control of securities belonging to a decedent. It would be inapplicable to anyone else. It is made to apply equally to everyone to whom it could apply. We find nothing to support the contention of plaintiff in error on this question.

II.

SECTION 9 IS APPLICABLE WHERE DECEDENT WAS A JOINT RENTER OF A SAFETY DEPOSIT BOX OR A COPARTNER.

A.

When the Safe Deposit Company obtained its charter the State reserved the right to regulate the conduct of its business.

Under division 1, subhead A, (1), (b) of this brief we contended that the charter of plaintiff in error was qualified and limited by the right of the General Assembly to at any time prescribe such regulations and provisions as it might deem advisable, as provided by section 9 of the general Incorporation act. If this point is well taken, it is just as applicable when the deceased renter of a box was a joint renter or a copartner as when the renter was the sole occupant. If the Safe Deposit company cannot complain, it is immaterial in this case that some other person might.

B.

No impairment of contract made by joint lessees or a partnership is alleged.

If the joint or partnership lease was entered into after July 1, 1909, section 9 of the Inheritance tax law became a part of the contract and cannot be said to impair. The bill contains no allegation of the death of any joint lessee or partner who contracted before July 1, 1909. Therefore no violation of Article I, Section 10,

prohibiting legislation impairing the obligation of contracts, is alleged.

C.

No unreasonable search or seizure, and no taking of property without due process of law is alleged or shown as to joint lessees or copartners.

As we have heretofore said, the bill contains no allegation of the death of any joint lessee or partner who contracted before July 1, 1909. Therefore the pleadings do not present anything to be considered by this court upon this subject. Even if the matter were properly presented by the pleadings, we deem it without merit. If the State has a vested interest in the estate of deceased lessee, it has a right to notice of delivery and to examine the property in question as much as the joint lessee or copartner. A partner who does not commingle his property with that of his joint lessee will not be put to any inconvenience or delay. A partner who does commingle his property with that of another does so with the knowledge that death will produce complications and inconvenience. The inconvenience and delay of complying with section 9 is immaterial as compared with the inconvenience and delay incident to the administration of the estate.

The legal representative can in the probate court compel plaintiff in error and the joint lessee of the deceased to produce the property and have the amount, character and value thereof determined. Ever since 1845

amended in 1873) there has been a statute in Illinois providing that:

> "If any executor, administrator or other person interested in any estate shall state upon oath to any County Court that he believes that any person has in his possession or has concealed or embezzled any goods, chattels, monies or effects, books of account, papers or any evidence of indebtedness whatever, or titles to lands belonging to any deceased person, * * * the court shall require such person to appear before it by citation and may examine him on oath * * * and make such order in the premises as the case may require."

This statute is held by the courts of Illinois to give administrators a more summary and less expensive mode of recovering assets than by bill in chancery. It has never been held unconstitutional and has been enforced for over sixty years. (Hurd's Rev. Stat., Chapt. 3, Par. 80.)

When the Lessee is a Copartner.

Ever since 1869 the statutes of Illinois have provided for a full examination of a surviving partner and a disclosure of the amount, character and value of the partnership assets. (Hurd's Rev. Stat., Chap. 3, Pars. 86 to 89, inclusive.)

This act provides that the surviving partner shall make a complete inventory of the estate of the copartnership and cause the estate to be appraised, and file the same within sixty days of the death of the copartner in the County Court. Upon application of the executor or

administrator the County Court may order such surviving partner to render an account, and may enforce the same by citation, and may, to protect the estate of the deceased partner, appoint a receiver of the partnership effects. These laws have been enforced since 1869 and have not been held unconstitutional. These statutes go farther than section 9 of the Inheritance tax act, but have never been held to provide for unreasonable search or seizure or the taking of property without due process of law. If the State is authorized to make such laws, it is also authorized to make such a law as section 9 in question.

We would further call attention to the fact that anyone interested in the property could, in a court of equity, cause the production and examination thereof. *A fortiorie*, the State can by statute provide for the production and examination of the contents of a safety deposit box in which it may have a vested interest.

There is no constitutional objection to requiring the surviving partner to inform all persons interested in the estate, including the State, as to the amount, character and value of the assets, as such information assists the just administration and distribution thereof. Section 9 only places the State in the same position as other owners in regard to its right to be informed. Therefore it provides for no unreasonable search or seizure and no taking of property without due process of law.

III.

Finally it is urged that if section 9 is constitutional, the State Treasurer and Attorney General base claims thereon which are unconstitutional.

Since this case was begun others have succeeded to the offices of State Treasurer and Attorney General. What one person may claim another may not. The declaration contains no allegation of any specific claim in any particular case. The matter has become, if it has not always been, a moot-case not entitled to the attention of the court. The bill does not even state what the State Treasurer and Attorney General claim as to the rights of a survivor of a joint lease or a lease by a copartnership. The court will presume that the new State officers will claim nothing beyond the law as declared by the statutes. There is therefore nothing to be considered other than the terms of the statute itself.

IV.

CONCLUSION.

In conclusion we insist that the constitutional rights of lessees of safety deposit boxes are not involved in this case, that the only constitutional question involved in this case is the validity of section 9 in so far as it affects the rights of plaintiff in error under its articles of incorporation and limited by the allegations of the bill in this respect, that said section 9 of the general Incorporation act is decisive of the constitutionality of section 9

of the Inheritance tax act, so far as plaintiff in error is concerned, and decides every question properly before this court on this writ of error.

We therefore respectfully submit that the writ of error should be dismissed,

Very respectfully,

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